राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 09 मई, 2022 / 19 वैशाख, 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 2nd April, 2022

No. **Shram (A) 6-2/2020 (Awards) Dharamshala**.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased

to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award /Order
1.	44/18	Bhuwan Pradeep Sharma	M/S Amar Ujala Publication	25-02-2022
2.	45/18	Jai Kumar	-do-	25-02-2022
3.	108/16	Daulat Ram	Registrar, Dr. Y.S. Parmar University, Solan & other.	25-02-2022
4.	330/16	Om Chand	-do-	25-02-2022
5.	110/16	Khem Singh	-do-	25-02-2022
6.	109/16	Ram Lal	-do-	25-02-2022
7.	107/16	Dev Raj	-do-	25-02-2022
8.	254/16	Chet Ram	-do-	25-02-2022
9.	331/16	Luddar Mani	-do-	25-02-2022
10.	332/16	Om Chand	-do-	25-02-2022

By order,

R.D. DHIMAN, IAS,
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)

Ref. No. : 44/2018
Date of Institution : 06.6.2018
Date of Decision : 25-02-2022

Shri Bhuwan Pradeep Sharma s/o Late Shri Dimu Ram, r/o H.No.249/2, Purani Mandi, District Mandi, H.P. . . *Petitioner.*

Versus

M/s. Amar Ujala Publication Ltd., 22, Industrial Area Nagrota Bagwan, District Kangra, H.P. . . *Respondent.*

Reference under Section 17(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

For the Petitioner : Petitioner in person with Sh. Dinesh Kumar, Ld. Advocate.

For the Respondent : Sh. Rajnish Justa, Officer (HR)
: Sh. Rajat Chaudhary, Ld. Advocate

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"1. "Whether employer-employee relationship existed between the applicant/claimant and management ever", If Yes.

2. "Whether applicant/claimant is entitled to the amount of Rs.10,96,260/- as claimed by him from the management under the Majithia Wage Board?"

2. After receipt of the aforementioned reference, a corrigendum has been received from the appropriate Government which reads as under:—

"In continuation to this office notification No. LO/MZ/IV/LL/WJA/02/17-269-74, dated 21.05.2018, it is submitted that on 29.12.2018 Sh. Bhuwan Pradeep Sharma Workman/Claimant moved an application for correction in the designation and date of termination in the main application. He has submitted that the designation of the workman had been erroneously written as Photo Journalist instead of Designer and date of termination had been written 31.07.2017 instead 31.01.2015. Therefore, as per the contents of the application moved by the workman/applicant the designation of the applicant be read **Designer in place of Photo Journalist and date of termination be read as 31.01.2015 instead of 31.07.2017".**

2. Today the case is listed for evidence of petitioner, however, petitioner Shri Bhuwan Pradeep Sharma as well as Shri Rajnish Justa, Officer (HR) of respondent have made the following joint statement in the Court today:—

"We have settled the present dispute vide compromise Ex.PA and the same may kindly be taken on record. In terms of compromise Ex.PA reference may be disposed off as compromised and answered accordingly".

RO & AC PJ
Sd/- Sd/-
(Sh. Bhuwan Pradeep Sharma)
Sd/-
(Shri Rajnish Justa, Officer (HR)

3. As per compromise Ex.PA the parties have settled the dispute on the following terms and conditions:—

"1. That the applicant understood at any time there was no relation of employee and employer was in existence between the parties and no dispute of any termination or wages or any arrear of wages.

2. That now the applicant does not have any claim whatsoever against the opposite parties regarding his dues, wages or reinstatement and re-employment.

3. That the applicant not pressed his above noted case and withdraw the same".

4. In view of the above joint statement recorded and compromise Ex.PA, this reference/claim petition is disposed of as compromised. Parties to bear their own costs.

5. The reference is answered in the aforesaid terms

6. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2022.

Sd/-
(ARVIND MALHOTRA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi)

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)**

Ref. No.	:	45/2018
Date of Institution	:	06-6-2018
Date of Decision	:	25-02-2022

Shri Jai Kumar s/o Late Shri Hem Prabh, r/o VPO Ghiri, Tehsil Sundernagar, District Mandi, H.P. . . *Petitioner.*

Versus

M/s. Amar Ujala Publication Ltd., 22, Industrial Area Nagrota Bagwan, District Kangra, H.P. . . *Respondent.*

Reference under Section 17(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

For the Petitioner	:	Petitioner in person with Sh. Dinesh Kumar, Ld. Advocate.
For the Respondent	:	Sh. Rajnish Justa, Officer (HR)
	:	Sh. Rajat Chaudhary, Ld. Advocate

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"1. "Whether employer-employee relationship existed between the applicant/claimant and management ever", If Yes.

2. "Whether applicant/claimant is entitled to the amount of Rs. 22,21,517/-as claimed by him from the management under the Majithia Wage Board?"

2. Today the case is listed for evidence of petitioner, however, petitioner Shri Jai Kumar as well as Shri Rajnish Justa, Officer (HR) of respondent have made the following joint statement in the Court today:—

"We have settled the present dispute vide compromise Ex.PA and the same may kindly be taken on record. In terms of compromise Ex.PA reference may be disposed off as compromised and answered accordingly".

RO & AC PJ
Sd/- Sd/-
(Sh. Jai Kumar)
Sd/-
(Shri Rajnish Justa, Officer (HR)

3. As per compromise Ex.PA the parties have settled the dispute on the following terms and conditions:—

"1. That the applicant understood at any time there was no relation of employee and employer was in existence between the parties and no dispute of any termination or wages or any arrear of wages.

2. That now the applicant does not have any claim whatsoever against the opposite parties regarding his dues, wages or reinstatement and re-employment.

3. That the applicant not pressed his above noted case and withdraw the same".

4. In view of the above joint statement recorded and compromise Ex.PA, this reference/claim petition is disposed of as compromised. Parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2022.

Sd/-
(ARVIND MALHOTRA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.
(Camp at Mandi).

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)**

Ref. No.	:	108/2016
Date of Institution	:	04-3-2016
Date of Decision	:	25.02.2022

Shri Daulat Ram s/o Late Shri Het Ram, r/o Village Tanaru, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P.

2. The Associate Director, (R&E), Dr. Y. S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, HP. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vijay Kaundal, Ld. Advocate
Sh. Rajat Chaudhary, Ld. Advocate

For the Respondents : Sh. Munish Kumar, Ld. Advocate

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

> "Whether time to time termination of the services of Shri Daulat Ram s/o Late Shri Het Ram, r/o Village Tanaru, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. during year, 1996 to 17-06-2013 and finally w.e.f. 18-06-2013 (as alleged by workman) by (i) the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. (ii) the Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. In nutshell, the facts pleaded by petitioner in statement of claim are as follows. Petitioner was engaged as daily waged labourer by respondent no. 2 *w.e.f.* year 1996 and he interruptedly worked upto 17.6.2013 on muster rolls basis alongwith other co-workmen. From 1996 to 17.6.2013, services of petitioner were engaged and disengaged by respondents giving fictional breaks, not letting him complete 240 days for the purpose of continuous service under Section 25-B of the Act. Respondent no.2 engaged 30 labourers on daily waged basis in Regional Research Station, Bajaura, Kullu in two batches who were terminated on completion of 89 days, which practice continued till 17.6.2013. All of sudden services of petitioner were finally and unlawfully terminated on 18.06.2013 without complying the mandatory provisions of the Act. Respondents neither issued any show cause notice, charge-sheet, conducted any inquiry nor paid one month's pay in lieu of notice period, retrenchment compensation and without complying the same every termination is null, void ab-initio.

3. Petitioner has further claimed that principle of 'last come first go' was not followed as junior workmen in two batches namely Chet Ram (1996), Khem Singh II (1998), Om Chand (2001) and others were retained, which is violation of Section 25-G of the Act. Services of one Nanak Chand engaged by respondent no.2 in 1993 on muster rolls were regularized on completion of 240 days in each calendar year. After termination of the services of petitioner work has been assigned to

the contractor by respondent no.2 and fresh hands have been engaged by the department in the roll of contractor namely M/s Shimla Cleanways. The act of respondents to engage services of petitioner and co-workmen in two spells in order to defeat their right of permanent workmen is unfair labour practice as per 5th Schedule Clause 6, 9 and 10 of the Act. Petitioner has further claimed to be not gainfully employed anywhere and thus he prayed for setting aside illegal breaks, condoning the break period with seniority and back wages as also setting aside the final termination w.e.f. 18.06.2013 with reinstatement. He also prayed for considering the case of petitioner for regularization and litigation costs of Rs.15,000/-.

4. Respondents contested the claim by filing common reply raising preliminary objections qua maintainability, petition barred by limitation. It is averred in the preliminary objections that as per standing instructions implemented by university w.e.f. 1.1.2002 labourer was engaged on contractual basis to do manual work on seasonal basis by needy departments/research stations at fixed wages for specific spell of 89 days, whereafter his services were automatically terminated in accordance with terms and conditions of engagement, non joinder of necessary party i.e. Director of Research of the university as principal employer under the policy of outsourcing. On merits, respondents submitted that petitioner was engaged as daily paid labourer during year 1996 by respondent no.2 to do manual seasonal work at Regional Horticulture Research Station. He worked in different spells from 1996 to 2001 and left the job of his own. Petitioner has not completed 240 days in any calendar year. Respondents denied giving fictional breaks to the petitioner. Shri Nanak Chand s/o Shri Gulab Chand was engaged as daily paid labourer on 9.3.1992 by respondent no.2 and his services were regularized in accordance with the instructions of Secretary (Personnel) to the Govt. of Himachal Pradesh vide office order dated 30.4.2012. It is further submitted that seniority of those daily paid labourers was maintained who had completed 240 days during calendar year. Respondents denied the claim of petitioner and prayed for dismissal of the claim petition.

5. Rejoinder was filed by the petitioner reiterating contents of petition and denying those of reply filed by respondents.

6. On the pleadings of parties, following issues were framed on 19.3.2019:—

1. Whether time to time termination of services of the petitioner by the respondents during year, 1996 to 17.6.2013 and finally w.e.f. 18.6.2013 is/was illegal and unjustified, as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in present form, as alleged? . .*OPR*.

4. Whether the claim petition is time barred, as alleged? . .*OPR*.

5. Whether the petitioner was engaged as a labourer on contractual basis to do manual work on seasonal basis, as alleged? . .*OPR*.

6. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? . .*OPR*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner Sh. Daulat Ram appeared as PW1 and deposed his claim through sworn affidavit Ex.PW1/A, as contained in the claim petition. He also tendered in evidence copy of Award dated 24.4.2018 Ex.PW1/B passed by

this Court whereby Shri Rajesh Kumar was ordered to be re-engaged by the respondents i.e. The Dean, College of Horticulture and Forestry Neri and The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan. In cross-examination, petitioner denied not having completed 240 days as also his engagement for seasonal work. He denied engagement as per the standing instructions. He also denied working with M/s Shimla Clean Ways (Contractor). He admitted that he was engaged for 89 days. He denied that he voluntarily left the work on completion of 89 days.

8. On the other hand, respondents examined Shri Bhupinder Singh Thakur, Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station, Bajaura, District Kullu as RW1, who deposed the defence of respondents vide his affidavit Ex.RW1/A, as contained in the reply. He also tendered in evidence copy of standing instructions dated 5.12.2001 from the Registrar Ex.RW1/B regarding engagement of labour on contractual basis, copy of letter dated 14.6.2002 Ex.RW1/C, copy of notification dated 30.4.2013 Ex.RW1/D regarding outsourcing of unskilled labour services, copy of notification dated 13.8.2014 Ex.RW1/E regarding extension of contract in favour of M/s Shimla Clean Ways, copy of notification dated 31.3.2015 Ex.RW1/F regarding outsourcing unskilled labour services to M/s. Rainbow Enterprises, copy of licence of contractor dated 18.9.2015 Ex.RW1/G, copy of month wise attendance of petitioner Ex.RW1/H, copies of office memorandums/tentative seniority lists Ex.RW1/I to RW1/V as stood during period 31.12.1999 to 31.12.2014 and copy of list of old records to be destroyed Ex.RW1/W. In cross-examination, he admitted that petitioner was engaged in year 1996 and at the time of engagement of petitioner on work no appointment letter was issued nor terms and conditions settled. He further deposed that they have not issued any notice to the petitioner for alleged abandonment of work. He denied petitioner having worked till 17.6.2013 but self stated he worked on muster roll basis till 2001 and thereafter he worked on contractual basis. He claimed ignorance if notice under Section 9A (a) of the Act was given for changing the work of petitioner from muster rolls to contract basis. He was not sure if petitioner has worked on contract basis from 1.1.2002 till 17.6.2013. He admitted that workers mentioned at serial nos. 219 to 299 in seniority list Ex.RW1/I are junior to the petitioner and have worked regularly in the University. He claimed ignorance if workers at serial nos.168 to 170 in seniority list Ex.RW1/O and workers at serial no.29 to 33 in tentative seniority list Ex.RW1/R are on the rolls of University. He further deposed that the workers mentioned at serial nos. 20 & 21 in seniority list Ex.RW1/V might have been appointed in year 2013.

9. I have heard learned counsel for the parties at length and carefully considered the material on record.

10. Learned counsel for petitioner argued that petitioner has served the respondents as daily wager throughout his engagement in year 1996 to 17.6.2013 but respondents under garb of standing instructions Ex.RW1/B which as per respondents were implemented from 1.1.2002 and remained in vogue up April, 2013, as also under the outsourcing policy, have given fictional breaks as well finally terminated his service on 18.6.2013. He submitted that the standings instructions have already been held illegal by this Court vide Award Ex.PW1/B. Further on assailing Award Ex.PW1/B alongwith similar matters pertaining to the respondents, Hon'ble High Court vide judgement dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has held that the initial engagement of workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent workman did not complete 240 days in a calendar year. Judgement dated 13.11.2018 of Hon'ble High Court has attained finality as the Special Leave Petition preferred by respondent University stands dismissed by Hon'ble Supreme Court vide judgement dated 25.11.2019 passed in Special Leave Petition (CIVIL) Diary No(s) 37890/2019.

11. On the other hand, learned counsel for respondents has argued that petitioner was engaged on contractual basis to do manual work on seasonal basis for specific spells of 89 days and

in 2001 petitioner left the job at his own volition. He further submitted that as petitioner did not work for 240 days in any calendar year, therefore, he is not entitled for any of the reliefs claimed.

12. For the reasons to be recorded hereinafter, findings of this Court on above issues are as under:—

Issue No.1	:	Yes
Issue No.2	:	As per discussion
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Relief	:	Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 5

13. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

14. The claim of petitioner is that he was engaged as daily waged labourer w.e.f. year 1996 and he worked interruptedly upto 17.06.2013 as he was given fictional breaks by respondents. Respondents have denied engagement of petitioner from 1996 to 17.06.2013, however, they have asserted in the reply that petitioner worked in different spells from 1996 to year 2001 and left the job at his own will. They have denied giving fictional breaks to not let petitioner complete 240 days for the purpose of continuous service. Respondents' further case is that as per standing instructions Ex.RW1/B, the labourer was engaged on contractual basis to do manual work on seasonal basis for specific spell of 89 days whereafter his services were automatically terminated. Respondents have pleaded that the workman could work atleast two spells after break of 15 days in each spell whole of the year and no seniority was maintained as well these instructions were in vogue upto April, 2013.

15. Against aforesaid factual matrix, on analysis of evidence, it is observed that the month wise attendance of petitioner Ex.RW1/H, not disputed by either of the parties, mentions engagement on muster roll basis and his working at Bajaura between 21st July to 20th August, 1996 for 29 days. As per Ex.RW1/H petitioner has worked for total 151 days in 1996, 90 days in 1997, 102 days in 1998, 139 days in 1999, 30 days in 2000 and 189 days in 2001, whereafter, against year 2002 it is mentioned that policy regarding engagement of labour for 89 days on contractual basis was accepted by the University applicable *w.e.f.* 1.1.2002. RW1 though has denied that petitioner has worked till year 2013 but self stated that petitioner has worked on muster roll basis till 2001 and thereafter he had worked on contractual basis. Thus, the initial engagement is evident as between 21.7.1996 to 20.8.1996 per Ex.RW1/H on muster rolls and petitioner worked till 2001, whereafter petitioner has worked on contractual basis till 17.06.2013 as pleaded by petitioner in his rejoinder.

16. The pivotal question is whether fictional breaks in service were given to petitioner by the respondents. The plea of respondents that petitioner left the work in 2001 cannot be accepted as petitioner has denied the same as also RW1 has admitted having not issued any notice to the

petitioner for alleged abandonment of work. The plea of abandonment is required to be proved like any other plea but the same has not been done by the respondents. Respondents have also not established that respondent University/Research Station is a seasonal industry.

17. Another vital aspect of the matter is categoric admission of RW1 that workers mentioned at serial no. 219 to 299 in seniority list Ex.RW1/I are junior to the petitioner and have worked regularly in the university which proves that the aforementioned workers have all completed more than 240 days and were engaged/employed later than the petitioner. This proves two aspects, one that sufficient work was available as the juniors had regularly worked who completed more than 240 days. Secondly, the engagement of junior workers and disengaging petitioner from time to time between years 1996 to 2001 and not letting him complete 240 days in a calendar year for the purpose of continuous service is discriminatory and unfair labour practice on part of the respondents in terms of Section 2(ra) specified in Clause 10 of the Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

> "2(10) To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen".

18. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent university being the instrumentality of State under Article 12 of Constitution has to be have like a model employer and cannot indulge in unfair labour practice. The petitioner is a daily wager. He cannot be deprived benevolent provisions of the Act as disengaging him from time to time is nothing but refusal by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. The plea of abandonment, seasonal work and engagement of petitioner on contractual basis is camouflage. The aforementioned admission of RW1 also proves violation of Sections 25-G and 25-H of the Act as well violation of Articles 14 and 16 of the Constitution being discriminatory and arbitrary as the petitioner for no apparent cause has been discriminated viz-a-viz his juniors aforementioned.

19. Our Hon'ble High Court in recent judgement ***Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215*** has held the following:

> "Beli Ram vs. State of H.P. and others decided on 02.06.2009, in which this Court has held as under:—
>
> > "The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must

be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15.06.2009, this Court has held as under:—

"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

20. It is also significant to note observations of Hon'ble High Court of Himachal Pradesh in ***Manoj Kumar Sharma vs. HRTC & Anr. 2007 LLR 1155*** wherein it is held as under:—

"…….(17) Hon'ble Supreme Court has held in Haryana State Electronic Department Corporation Limited v. Mamni, (2006) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and half years, in such circumstances, the Hon'ble Supreme Court has held the termination not bona fide but adopted to defeat the object of the Act. Thus, it is not covered by section 2 (oo) (bb) of the Industrial Disputes Act, 1947.

(18) In the present case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. This practice has been adopted by the management of respondent corporation to defeat the provisions of Section 25(F) of the Industrial Disputes Act, 1947. The letter dated 29-3-2001 issued by the Managing Director to all the Divisional Manager of the corporation-respondent amounts to unfair labour practice……"

21. Now coming to issue no.5 whether petitioner was engaged as labourer on contractual basis to do manual work on seasonal basis as alleged, it is observed that the answer certainly is in the negative for the reason that there is no contract alleged or brought on record by the respondents proving appointment of petitioner on contractual basis. The defence of respondents that in terms of standing instructions Ex.RW1/B respondents engaged petitioner on contractual basis for 89 days is

altogether a camouflage not to let petitioner complete 240 days and deprive the benefit of continuous service.

22. This Court finds merit in the submissions of learned counsel for petitioner that the standing instructions Ex.RW1/B are of no legal consequence as in Award Ex.PW1/B passed by this Court, the defence based on said standing instructions has already met with failure. Hon'ble High Court of Himachal Pradesh vide its decision dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has already dealt with this controversy and observed as under:—

> "……10. It is a matter of record that the respondent workman served the petitioners as an unskilled labourer from the year 2006 to 09.09.2014 when his services were terminated without any notice or retrenchment compensation. Record also demonstrates that initially the engagement of the workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent-workman did not complete 240 days in a calendar year. It is also evident from the record that respondent was initially engaged on 17.07.2006 and he continued to work with the petitioners till 20.07.2012, whereafter he was engaged from 15.07.2013 to 30.09.2014 for different number of working days through outsourcing agency of manpower, as per the Outsource Policy introduced w.e.f. April 2013. However, there is no documentary evidence suggesting that at any stage the services of the respondent-workman were placed at the disposal of M/S Shimla Cleanways by the petitioners.
>
> 11. It is apparent from the record that there is violation of Section 25-G of the Industrial Disputes Act, 1947 as workmen, namely, Asha Devi and Tara Chand, who were engaged on 13.07.2009 were permitted to complete more than 240 days in the years 2010, 2011, 2012 and also 2013, whereas on account of intermittent breaks given to the respondent-workman, he was not permitted to complete 240 days in a calendar year. Therefore, the termination of services of the respondent-workman in the year 2014 without complying with the provisions of Section 25-F amounts to violation of the provisions of the Industrial Disputes Act, 1947. It has also been rightly held by learned Labour Court that but for the fictional breaks granted to the respondent-workman, he would have completed "continuous service" in a year as envisaged under Section 25-B of the Industrial Disputes Act, 1947. This also proves that the petitioners gave deliberate breaks to the respondent-workman so that he could not complete 240 days in a calendar year. The factum of disengaging the respondent-workman periodically and retaining juniors also stands borne out from the record. In this view of the matter, we do not find any infirmity with the findings returned by the learned Labour Court directing reengagement of the services of the respondent-workman forthwith alongwith seniority and continuity in service……"

23. The judgement dated 13.11.2018 of Hon'ble High Court of Himachal Pradesh supra has attained finality as the Special Leave Petition (CIVIL) Diary No(s).37890/2019 titled The Dean College of Horticulture and Forestry Neri & Anr. vs. Joginder Singh arising out of final judgement dated 13.11.2018 aforementioned stands dismissed by Hon'ble Supreme Court.

24. Peculiar aspect of the matter is how service condition of the petitioner has been changed without issuance of any notice in terms of Section 9A of the Act has not been explained by the respondents. Petitioner has never consented to work on contractual basis.

25. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670*** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble

Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

> "[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec. 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent- Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item l in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the l.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

26. Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India*** supra has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

27. Thus, the arbitrary change in service condition of petitioner from working on muster rolls to contractual working is illegal in terms of Section 9A of the Act and cannot be countenanced. Consequently, it is held that there has been time to time termination of services of the petitioner by the respondents from initial engagement in July, 1996 to 17.6.2013 which are fictional/artificial as well there was final termination on 18.6.2013. The same are illegal and unjustified. Issue no.1 is accordingly decided in affirmative and issue no.5 in the negative.

ISSUE No. 2

28. As the fictional breaks given to the petitioner from July, 1996 to 17.6.2013 as well final termination on 18.6.2013 are declared unjustified and illegal, petitioner is held entitled to be deemed in continuous service from his initial date of engagement in July, 1996 and is liable to be reinstated forthwith. Petitioner is also entitled to consequential benefits of seniority from his initial date of employment in July,1996 except back wages as petitioner has not deposed/averred as to how he has been able to maintain himself in absence of being gainfully employed/working.

Petitioner in his affidavit Ex.PW1/A mentioned him 44 years of age and it cannot be presumed that person of such age would remain without work for long since year 2013. Issue no.2 is decided in above terms.

ISSUE No. 3

29. In view of positive findings on issues no.1 and 2, the claim petition is held maintainable. Even otherwise, respondents have not proved or established the petition to be not maintainable. Accordingly, issued no.3 is answered in negative against the respondents.

ISSUE No. 4

30. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, ***(1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

31. There is no unreasonable delay by petitioner in raising the industrial dispute. Further, the reference by appropriate Government made in February, 2016 does not raise this issue as also makes reference to letter dated 9.12.2014 of Labour -cum-Conciliation Officer, Kullu. Thus, the claim petition is not time barred. Accordingly, issue no.4 is answered in negative against respondents.

ISSUE No. 6

32. Respondents have averred in the preliminary objections that the Director of Research of University, is the principal employer under the policy of outsourcing who has not been arrayed as a necessary party. Policy of outsourcing is stated to be introduced by the university *w.e.f.* 1st May, 2013 vide notification dated 30.4.2013. However, the petitioner was engaged in 1996 and was finally terminated on 18.6.2013, therefore said policy of outsourcing is not material in this case. Furthermore, the Associate Director respondent no.2 is the relevant and necessary party in terms of reference, who stands arrayed in the claim petition as well. Consequently, this issue is answered in negative against the respondents.

RELIEF

33. As a sequel to the findings of this Court on the aforementioned issues, the claim petition is allowed in part. It is held that time to time artificial breaks in service given to petitioner by respondents from July, 1996 to 17.06.2013 as well final termination on 18.06.2013 are illegal and unjustified. Respondents are directed to re-engage the petitioner forthwith, who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in July, 1996. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged labourer, **except back wages**. His seniority shall be reckoned from the date of initial engagement in July, 1996. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2022.

Sd/-
(ARVIND MALHOTRA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)**

Ref. No.	:	330/2016
Date of Institution	:	26.5.2016
Date of Decision	:	25.02.2022

Shri Om Chand s/o Shri Lot Ram, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. ..*Petitioner.*

Versus

1. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P.

2. The Associate Director, (R&E), Dr. Y. S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, HP. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner	:	Sh. Vijay Kaundal, Ld. Advocate Sh. Rajat Chaudhary, Ld. Advocate
For the Respondents	:	Sh. Munish Kumar, Ld. Advocate

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

> "Whether time to time termination of the services of Shri Om Chand s/o Shri Lot Ram, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. during year 2003 to June, 2013 and finally during July, 2013 (as alleged by workman) by (i) the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. (ii) the Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. In nutshell, the facts pleaded by petitioner in statement of claim are as follows. Petitioner was appointed as skilled helper with prior permission of respondent No.1 on daily waged basis by respondent No. 2 in year 2003 for 89 days and after completion of 89 days his services were unlawfully verbally terminated by respondent no.2 as fictional breaks were given for some days. Thereafter, petitioner's services were again re-engaged in same capacity for 89 days, which practice of engagement and disengagement continued till June, 2013. From 2003 to June, 2013, the respondents have not provided casual card or appointment letter to petitioner and the services of petitioner were terminated by respondents in July, 2013 without complying with the mandatory provisions of the Act. Before time to time termination of services and final termination in July, 2013 respondent has not given any notice or compensation under Section 25-F of the Act and without complying with the same his termination is null, void ab-initio. During service period of petitioner from 2003 to July, 2013 work and conduct of petitioner was fully satisfactory up to mark. Respondents neither issued any show cause notice, charge-sheet nor any inquiry was conducted against petitioner and respondents violated principle of natural justice.

3. Petitioner has further claimed that principle of 'last come first go' was violated by respondents as new persons were engaged in place of petitioner and junior workmen namely Dhimeshwar (2002), Uttam Chand (2003), Kanta Devi (2004) and others were retained by the respondents, which is violation of Sections 25-G and 25-H of the Act. In the month of November, 2013 respondents gave the work to contractor namely M/s. Cleanways Company Shimla and respondent No.2 told petitioner to work as helper on the roll of abovementioned contractor which the petitioner refused and due to this reason his services were finally terminated by the respondents. The act of giving fictional breaks by respondents is unfair labour practice as per 5th Schedule Clause 10 of the Act. Petitioner has further claimed to be not gainfully employed anywhere from July, 2013. Petitioner prayed for setting aside time to time termination from 2003 to June, 2013 and final termination *w.e.f.* July, 2013 with reinstatement, full back wages, continuity of service, seniority with consequential service benefits. He also prayed for considering the case of petitioner for regularization and litigation costs of Rs.15,000/-.

4. Respondents contested the claim by filing common reply raising preliminary objections qua maintainability, petition barred by limitation. It is averred in the preliminary objections that as per standing instructions implemented by university *w.e.f.* 1.1.2002 labourer was engaged on contractual basis to do manual work on seasonal basis by needy departments/research stations at fixed wages for specific spell of 89 days, whereafter his services were automatically terminated in accordance with terms and conditions of engagement, non joinder of necessary party *i.e.* Director of Research of the university as principal employer under the policy of outsourcing. On merits, respondents submitted that petitioner was engaged as labourer at Regional Horticulture Research and Training Station, Bajaura on 12.8.2003 on contractual basis at fixed wages for specific spell of 89 days to do manual work on seasonal basis, whereafter his services were automatically terminated in accordance with terms and conditions of engagement. All engagement of labourers were made on a fixed period for 89 days in one spell and two spells in whole of the year after break for atleast 15 days in each spells for seasonal job subject to availability of funds in accordance with standing instructions effective from 1.1.2002. Respondents denied that persons junior to petitioner have been engaged by respondents after disengagement of the services of petitioner from time to time. The Director of Research of respondent university floated tenders for outsourcing unskilled labourer w.e.f. 1.5.2013 and contract for outsourcing was awarded to M/s. Shimla Cleanways. The contract for outsourcing services of labourers w.e.f. April, 2015 to 31.3.2018 was further awarded to M/s. Rainbow Enterprises. Respondents denied giving fictional breaks to not let petitioner complete 240 days as also the provisions of Sections 25-G and 25-H of the Act. Respondents also denied unfair labour practice and termination during July, 2013. Respondents denied the claim of petitioner and prayed for dismissal of the claim petition.

5. Rejoinder was filed by the petitioner reiterating contents of petition and denying those of reply filed by respondents.

6. On the pleadings of parties, following issues were framed on 19.3.2019:—

1. Whether time to time termination of services of the petitioner by the respondents during year, 2003 to July, 2013 and finally w.e.f. July, 2013 is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in present form, as alleged? . .*OPR.*

4. Whether the claim petition is time barred, as alleged? . .*OPR.*

5. Whether the petitioner was engaged as a labourer on contractual basis to do manual work on seasonal basis, as alleged? . .*OPR.*

6. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? . .*OPR*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner Sh. Om Chand appeared as PW1 and deposed his claim through sworn affidavit Ex.PW1/A, as contained in the claim petition. He also tendered in evidence copy of Award dated 24.4.2018 Ex.PW1/B passed by this Court whereby Shri Rajesh Kumar was ordered to be re-engaged by the respondents *i.e.* The Dean, College of Horticulture and Forestry Neri and The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan. In cross-examination, petitioner denied not having completed 240 days in any year as also his engagement for seasonal work. He denied engagement as per the standing instructions. He also denied working with M/s Shimla Clean Ways (Contractor). He admitted that he was engaged for 89 days. He denied that he voluntarily left the work on completion of 89 days.

8. On the other hand, respondents examined Shri Bhupinder Singh Thakur, Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station, Bajaura, District Kullu as RW1, who deposed the defence of respondents vide his affidavit Ex.RW1/A, as contained in the reply. He also tendered in evidence copy of standing instructions dated 5.12.2001 from the Registrar Ex.RW1/B regarding engagement of labour on contractual basis, copy of letter dated 14.6.2002 Ex.RW1/C, copy of notification dated 30.4.2013 Ex.RW1/D regarding outsourcing of unskilled labour services, copy of notification dated 13.8.2014 Ex.RW1/E regarding extension of contract in favour of M/s Shimla Cleanways, copy of notification dated 31.3.2015 Ex.RW1/F regarding outsourcing unskilled labour services to M/s. Rainbow Enterprises, copy of licence of contractor dated 18.9.2015 Ex.RW1/G, copy of month wise attendance of petitioner Ex.RW1/H and copies of office memorandums/tentative seniority lists Ex.RW1/J to RW1/U as stood during period 31.12.2003 to 31.12.2014. In cross-examination, he admitted that petitioner was engaged in year 2003 and at the time of engagement of petitioner on work no appointment letter was issued nor terms and conditions settled. He further deposed that they have not issued any notice to the petitioner for alleged abandonment of work. He admitted petitioner having worked till June, 2013 but self stated he worked on contractual basis. He claimed ignorance if notice under Section 9A (a) of the Act was given for changing the work of petitioner

from muster rolls to contract basis. He was not sure if petitioner has worked on contract basis from year 2003 till June, 2013. He admitted that worker mentioned at serial No. 247 in seniority list Ex.RW1/M is junior to the petitioner and has worked regularly in the University. He claimed ignorance if workers at serial nos.168 to 170 in seniority list Ex.RW1/N and workers at serial no.29 to 33 in tentative seniority list Ex.RW1/Q are on the rolls of University. He further deposed that the workers mentioned at serial Nos. 20 & 21 in seniority list Ex.RW1/U might have been appointed in year 2013.

9. I have heard learned counsel for the parties at length and carefully considered the material on record.

10. Learned counsel for petitioner argued that petitioner has served the respondents as daily wager throughout his engagement in year 2003 to 2013 but respondents under garb of standing instructions Ex.RW1/B which as per respondents were implemented from 1.1.2002 and remained in vogue up April, 2013, as also under the outsourcing policy, have given fictional breaks as well finally terminated his service in July, 2013. He submitted that the standings instructions have already been held illegal by this Court vide Award Ex.PW1/B. Further on assailing Award Ex.PW1/B alongwith similar matters pertaining to the respondents, Hon'ble High Court vide judgment dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has held that the initial engagement of workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent workman did not complete 240 days in a calendar year. Judgement dated 13.11.2018 of Hon'ble High Court has attained finality as the Special Leave Petition preferred by respondent University stands dismissed by Hon'ble Supreme Court vide judgement dated 25.11.2019 passed in Special Leave Petition (CIVIL) Diary No(s) 37890/2019.

11. On the other hand, learned counsel for respondents has argued that petitioner was engaged on contractual basis to do manual work on seasonal basis for specific spells of 89 days and petitioner left the job at his own will. He further submitted that as petitioner did not work for 240 days in any calendar year, therefore, he is not entitled for any of the reliefs claimed.

12. For the reasons to be recorded hereinafter, findings of this Court on above issues are as under:—

Issue No.1	:	Yes
Issue No.2	:	As per discussion
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Relief	:	Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 5

13. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

14. The claim of petitioner is that he was appointed by respondent No. 2 on daily wage basis as skilled labourer *w.e.f.* 2003 for 89 days on muster roll but after completion of 89 days his services were unlawfully terminated, whereafter, he was re-engaged in the same capacity for 89 days and such practice of engagement and disengagement continued upto June, 2013. Petitioner has

further claimed that fictional breaks were given during this period of engagement and disengagement, however, he has completed 240 days in each year from 2003 to June, 2013.

15. Per contra, the respondents have claimed that petitioner was engaged as labourer on 12.8.2003 on contractual basis for specific spell of 89 days to do manual work on seasonal basis, whereafter his services automatically terminated in accordance with standing instructions Ex.RW1/B effective from 1.1.2002. They have denied fictional breaks to not let petitioner complete 240 days for the purpose of continuous service. Respondents further specifically pleaded that petitioner had worked in different spells from 2003 to year 2012 in accordance with standing instructions and left the job at his own after 14.9.2012.

16. It is apposite to take note of standing instructions Ex.RW1/B before evaluating the defence of respondents. Letter dated 5.12.2001 Ex.RW1/B specifically mentions that as per policy decision taken by University, heretofore, no new casual workers shall be employed on M/rolls by any functionary of the University *w.e.f.* 1.1.2002 except casual workers whose names are appearing in the seniority list. Clause IV (D) (e) of standing instructions provides as under:—

> "The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement a break of at least 15 days is necessary in each case.

17. Further, vide letter dated 14.6.2002 Ex.RW1/C issued by Registrar regarding engagement of contractual labour the duration for engagement of contractual labour, in the University is provided as under:—

> "Two spells of 89 days each in whole of the calendar year with break of at least 15 days in each spell and in each case".

18. The month-wise attendance of Shri Om Chand petitioner Ex.RW1/H reveals that he was engaged in year 2003 between 14.7.2003 to 26.9.2003 and he worked for 44 days in 2003. Thereafter, in two spells in 2004 he worked for 85 and 89 days totaling 174. Similarly in two spells; 88 and 71 days totaling 159 days in 2005 and so on, 142 days in 2006, 30 days in 2007, 171 days in 2008, 168 days in 2009, 40 days in 2010, 87 days in 2012, whereafter below year 2013 it is mentioned that policy of outsourcing of labour on contractual basis were opted which was applicable *w.e.f.*1.5.2013.The aforementioned month-wise attendance Ex.RW1/H does prove that petitioner Om Chand was engaged and disengaged time to time between 2003 to 2012 not allowing him to work regularly and beyond 89 days in either of the spells. The plea of respondents that petitioner did not report for work to the contractor after year 2012 and left the job at his own cannot be accepted as petitioner has denied the same as also RW1 has admitted having not issued any notice to petitioner for alleged abandonment of work. The plea of abandonment is required to be proved like any other plea but the same has not been done by the respondents. Respondents have also not established that respondent University/Research Station is a seasonal industry.

19. As observed above, petitioner has been engaged and disengaged not allowing him to complete more than 89 days in any spell and completing 240 days in a calendar year. This proves that fictional breaks were given to petitioner. Plea of respondents that essential manual seasonal work was subject to availability of funds, cannot be believed as the same work was allegedly allotted to the contractor. The disengagement of petitioner from time to time between 2003 to June, 2013 and not letting him complete 240 days in a calendar year for the purpose of continuous service is discriminatory and unfair labour practice on part of the respondents in terms of Section 2(ra) specified in Clause 10 of the Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

"2(10) To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen".

20. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent university being the instrumentality of State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a daily wager. He cannot be deprived benevolent provisions of the Act as disengaging him from time to time is nothing but refusal by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. The plea of abandonment, seasonal work and engagement of petitioner on contractual basis is camouflage.

21. Our Hon'ble High Court in recent judgment ***Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215*** has held the following:

"Beli Ram vs. State of H.P. and others decided on 02.06.2009, in which this Court has held as under:—

"The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15.06.2009, this Court has held as under:—
"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him

artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

22. It is also significant to note observations of Hon'ble High Court of Himachal Pradesh in ***Manoj Kumar Sharma vs. HRTC & Anr. 2007 LLR 1155*** wherein it is held as under:—

"…….(17) Hon'ble Supreme Court has held in Haryana State Electronic Department Corporation Limited v. Mamni, (2006) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and half years, in such circumstances, the Hon'ble Supreme Court has held the termination not bona fide but adopted to defeat the object of the Act. Thus, it is not covered by section 2 (oo) (bb) of the Industrial Disputes Act, 1947.

(18) In the present case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. This practice has been adopted by the management of respondent corporation to defeat the provisions of Section 25(F) of the Industrial Disputes Act, 1947. The letter dated 29-3-2001 issued by the Managing Director to all the Divisional Manager of the corporation-respondent amounts to unfair labour practice……"

23. Now coming to issue no.5 whether petitioner was engaged as labourer on contractual basis to do manual work on seasonal basis as alleged, it is observed that the answer certainly is in the negative for the reason that there is no contract alleged or brought on record by the respondents proving appointment of petitioner on contractual basis. The defence of respondents that in terms of standing instructions Ex.RW1/B respondents engaged petitioner on contractual basis for 89 days is altogether a camouflage not to let petitioner complete 240 days and deprive the benefit of continuous service.

24. This Court findings merit in the submissions of learned counsel for petitioner that the standing instructions Ex.RW1/B are of no legal consequence as in Award Ex.PW1/B passed by this Court, the defence based on said standing instructions has already met with failure. Hon'ble High Court of Himachal Pradesh vide its decision dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has already dealt with this controversy and observed as under:—

"……10. It is a matter of record that the respondent workman served the petitioners as an unskilled labourer from the year 2006 to 09.09.2014 when his services were terminated without any notice or retrenchment compensation. Record also demonstrates that initially the engagement of the workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent-workman did not complete 240 days in a calendar year. It is also evident from the record that respondent was initially engaged on 17.07.2006 and he continued to work with the petitioners till 20.07.2012, whereafter he was engaged from 15.07.2013 to 30.09.2014 for different number of working days through outsourcing agency of manpower, as per the Outsource Policy introduced *w.e.f.* April 2013. However, there is no documentary evidence suggesting that at any stage the services of the respondent-workman were placed at the disposal of M/S Shimla Cleanways by the petitioners.

11. It is apparent from the record that there is violation of Section 25-G of the Industrial Disputes Act, 1947 as workmen, namely, Asha Devi and Tara Chand, who were engaged on 13.07.2009 were permitted to complete more than 240 days in the years 2010, 2011, 2012 and also 2013, whereas on account of intermittent breaks given to the respondent-workman, he was not permitted to complete 240 days in a calendar year. Therefore, the termination of services of the respondent-workman in the year 2014 without complying with the provisions of Section 25-F amounts to violation of the provisions of the Industrial Disputes Act, 1947. It has also been rightly held by learned Labour Court that but for the fictional breaks granted to the respondent-workman, he would have completed "continuous service" in a year as envisaged under Section 25-B of the Industrial Disputes Act, 1947. This also proves that the petitioners gave deliberate breaks to the respondent-workman so that he could not complete 240 days in a calendar year. The factum of disengaging the respondent-workman periodically and retaining juniors also stands borne out from the record. In this view of the matter, we do not find any infirmity with the findings returned by the learned Labour Court directing reengagement of the services of the respondent-workman forthwith alongwith seniority and continuity in service……"

25. The judgment dated 13.11.2018 of Hon'ble High Court of Himachal Pradesh supra has attained finality as the Special Leave Petition (CIVIL) Diary No(s).37890/2019 titled The Dean College of Horticulture and Forestry Neri & Anr. vs. Joginder Singh arising out of final judgement dated 13.11.2018 aforementioned stands dismissed by Hon'ble Supreme Court.

26. Peculiar aspect of the matter is how respondents are authorized to change service condition of petitioner from working under them as daily paid labourer to work under the alleged contractor without issuance of any notice in terms of Section 9A of the Act has not been explained by the respondents. Petitioner has never consented to work on contractual basis.

27. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670*** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

"[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec. 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent- Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of

any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item l in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the l.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

28. Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India*** supra has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

29. Thus, the arbitrary change in service condition of petitioner from directly working under the respondents as labourer on daily basis to contractual working or under the Contractor is illegal in terms of Section 9A of the Act and cannot be countenanced. Consequently, it is held that there has been time to time termination of services of the petitioner by the respondents from initial engagement in July, 2003 to June, 2013 which are fictional/artificial as well there was final termination in July, 2013. The same are illegal and unjustified. Issue no.1 is accordingly decided in affirmative and issue no.5 in the negative.

ISSUE No. 2

30. As the fictional breaks given to the petitioner from July, 2003 to June, 2013 as well final termination during July, 2013 are declared unjustified and illegal, petitioner is held entitled to be deemed in continuous service from his initial date of engagement July, 2003 and is liable to be reinstated forthwith. Petitioner is also entitled to consequential benefits of seniority from his initial date of engagement in July, 2013 except back wages as petitioner has not deposed/averred as to how he has been able to maintain himself in absence of being gainfully employed/working. Petitioner in his affidavit Ex.PW1/A mentioned him 34 years of age and it cannot be presumed that person of such age would remain without work for long since July, 2013. Issue no.2 is decided in above terms.

ISSUE No. 3

31. In view of positive findings on issues No. 1 and 2, the claim petition is held maintainable. Even otherwise, respondents have not proved or established the petition to be not maintainable. Accordingly, issued no.3 is answered in negative against the respondent.

ISSUE No. 4

32. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, ***(1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:
"*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

33. There is no unreasonable delay by petitioner in raising the industrial dispute. Further, the reference by appropriate Government made in May, 2106 does not raise this issue as also makes reference to letter dated 12.5.2014 of Labour-cum-Conciliation Officer, Kullu. Thus, the claim petition is not time barred. Accordingly, issue no.4 is answered in negative against respondents.

ISSUE No. 6

34. Respondents have averred in the preliminary objections that the Director of Research of University, is the principal employer under the policy of outsourcing who has not been arrayed as a necessary party. Policy of outsourcing is stated to be introduced by the university *w.e.f.* 1st May, 2013 vide notification dated 30.4.2013. However, the petitioner was engaged in July, 2003 and was finally terminated in July, 2013, therefore said policy of outsourcing is not material in this case. Furthermore, the Associate Director respondent no.2 is the relevant and necessary party in terms of reference, who stands arrayed in the claim petition as well. Consequently, this issue is answered in negative against the respondents.

RELIEF

35. As a sequel to the findings of this Court on the aforementioned issues, the claim petition is allowed in part. It is held that time to time artificial breaks in service given to petitioner by respondents from July, 2003 to June, 2013 as well final termination during July, 2013 are illegal and unjustified. Respondents are directed to re-engage the petitioner forthwith, who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in July, 2003. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged labourer, **except back wages**. His seniority shall be reckoned from the date of initial engagement in July, 2003. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2022

Sd/-
(ARVIND MALHOTRA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)**

Ref. No.	:	110/2016
Date of Institution	:	04.3.2016
Date of Decision	:	25.02.2022

Shri Khem Singh s/o Shri Beli Ram, r/o Village Tanaru, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. . .*Petitioner*.

Versus

1. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P.

2. The Associate Director, (R&E), Dr. Y. S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, HP. . .*Respondents*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vijay Kaundal, Ld. Advocate
Sh. Rajat Chaudhary, Ld. Advocate

For the Respondents : Sh. Munish Kumar, Ld. Advocate

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

> "Whether time to time termination of the services of Shri Khem Singh s/o Shri Beli Ram, r/o Village Tanaru, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. during year, 1996 to February, 2013 and finally during March, 2013 (as alleged by workman) by (i) the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. (ii) the Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. In nutshell, the facts pleaded by petitioner in statement of claim are as follows. Petitioner was engaged as daily waged labourer by respondent no.2 w.e.f. year 1996 and he interruptedly worked upto February, 2013 on muster rolls alongwith other co-workmen. From 1996 to February, 2013, services of petitioner were engaged and disengaged by respondents giving fictional breaks, not letting him complete 240 days for the purpose of continuous service under Section 25-B of the Act. Respondent no.2 engaged 30 labourers on daily waged basis in Regional Research Station, Bajaura, Kullu in two batches who were terminated on completion of 89 days, which practice continued till February, 2013. All of sudden services of petitioner were finally and unlawfully terminated during March, 2013 without complying the mandatory provisions of the Act. Respondents neither issued any show cause notice, charge-sheet, conducted any inquiry nor paid one month's pay in lieu of notice period, retrenchment compensation and without complying the same every termination is null, void ab-initio.

3. Petitioner has further claimed that principle of 'last come first go' was not followed as junior workmen in two batches namely Chet Ram (1996), Khem Singh II (1998), Om Chand (2001) and others were retained, which is violation of Section 25-G of the Act. Services of one Nanak Chand engaged by respondent No.2 in 1993 on muster rolls were regularized on completion of 240 days in each calendar year. After termination of the services of petitioner work has been assigned to the contractor by respondent No.2 and fresh hands have been engaged by the department in the roll of contractor namely M/s Shimla Cleanways. The act of respondents to engage services of petitioner and co-workmen in two spells in order to defeat their right of permanent workmen is

unfair labour practice as per 5th Schedule Clause 6, 9 and 10 of the Act. Petitioner has further claimed to be not gainfully employed anywhere and thus he prayed for setting aside illegal breaks, condoning the break period with seniority and back wages as also setting aside the final termination in March, 2013 with reinstatement. He also prayed for considering the case of petitioner for regularization and litigation costs of Rs.15,000/-.

4. Respondents contested the claim by filing common reply raising preliminary objections qua maintainability, petition barred by limitation. It is averred in the preliminary objections that as per standing instructions implemented by university *w.e.f.* 1.1.2002 labourers were engaged on contractual basis to do manual work on seasonal basis by needy departments/research stations at fixed wages for specific spell of 89 days, whereafter services of petitioner automatically terminated in accordance with terms and conditions of engagement, non joinder of necessary party i.e. Director of Research of the university as principal employer under the policy of outsourcing. On merits, respondents submitted that petitioner was engaged as daily paid labourer during year 1996 by respondent No.2 to do manual seasonal work at Regional Horticulture Research Station. He worked in different spells from 1996 to 2001 and left the job of his own. Petitioner has not completed 240 days in any calendar year. Respondents denied giving fictional breaks to the petitioner. Shri Nanak Chand s/o Shri Gulab Chand was engaged as daily paid labourer on 9.3.1992 by respondent No.2 and his services were regularized in accordance with the instructions of Secretary (Personnel) to the Govt. of Himachal Pradesh vide office order dated 30.4.2012. It is further submitted that seniority of those daily paid labourers was maintained who had completed 240 days during calendar year. Respondents denied the claim of petitioner and prayed for dismissal of the claim petition.

5. Rejoinder was filed by the petitioner reiterating contents of petition and denying those of reply filed by respondents.

6. On the pleadings of parties, following issues were framed on 19.3.2019:—

1. Whether time to time termination of services of the petitioner by the respondents during year, 1996 to February, 2013 and finally during March, 2013 is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in present form, as alleged? . .*OPR.*

4. Whether the claim petition is time barred, as alleged? . .*OPR.*

5. Whether the petitioner was engaged as a labourer on contractual basis to do manual work on seasonal basis, as alleged? . .*OPR.*

6. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? . .*OPR.*

Relief.

7. Parties to the lis adduced evidence in support of their claims.Petitioner Sh. Khem Singh appeared as PW1 and deposed his claim through sworn affidavit Ex.PW1/A, as contained in the claim petition. He also tendered in evidence copy of Award dated 24.4.2018 Ex.PW1/B passed by this Court whereby Shri Rajesh Kumar was ordered to be re-engaged by the respondents i.e. The

Dean, College of Horticulture and Forestry Neri and The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan. In cross-examination, petitioner denied not having completed 240 days as also his engagement for seasonal work. He denied engagement as per the standing instructions. He also denied working with M/s Shimla Clean Ways (Contractor). He admitted that he was engaged for 89 days. He denied that he voluntarily left the work on completion of 89 days.

8. On the other hand, respondents examined Shri Bhupinder Singh Thakur, Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station, Bajaura, District Kullu as RW1, who deposed the defence of respondents vide his affidavit Ex.RW1/A, as contained in the reply. He also tendered in evidence copy of standing instructions dated 5.12.2001 from the Registrar Ex.RW1/B regarding engagement of labour on contractual basis, copy of letter dated 14.6.2002 Ex.RW1/C, copy of notification dated 30.4.2013 Ex.RW1/D regarding outsourcing of unskilled labour services, copy of notification dated 13.8.2014 Ex.RW1/E regarding extension of contract in favour of M/s Shimla Clean Ways, copy of notification dated 31.3.2015 Ex.RW1/F regarding outsourcing unskilled labour services to M/s. Rainbow Enterprises, copy of licence of contractor dated 18.9.2015 Ex.RW1/G, copy of month wise attendance of petitioner Ex.RW1/H, copies of office memorandums/tentative seniority lists Ex.RW1/I to RW1/X as stood during period 31.12.1999 to 31.12.2014 and copy of list of old records to be destroyed Ex.RW1/Y. In cross-examination, he admitted that petitioner was engaged in year 1996 and at the time of engagement of petitioner on work no appointment letter was issued nor terms and conditions settled. He further deposed that they have not issued any notice to the petitioner for alleged abandonment of work. He denied petitioner having worked till March, 2013 but self stated he worked on muster roll basis till 2001 and thereafter he worked on contractual basis. He claimed ignorance if notice under Section 9A (a) of the Act was given for changing the work of petitioner from muster rolls to contract basis. He was not sure if petitioner has worked on contract basis from 1.1.2002 till March, 2013. He admitted that workers mentioned at serial nos. 219 to 299 in seniority list Ex.RW1/J are junior to the petitioner and have worked regularly in the University. He claimed ignorance if workers at serial nos.168 to 170 in seniority list Ex.RW1/Q and workers at serial No.29 to 33 in tentative seniority list Ex.RW1/T are on the rolls of University. He further deposed that the workers mentioned at serial nos. 20 & 21 in seniority list Ex.RW1/X might have been appointed in year 2013.

9. I have heard learned counsel for the parties at length and carefully considered the material on record.

10. Learned counsel for petitioner argued that petitioner has served the respondents as daily wager throughout his engagement in year 1996 to February, 2013 but respondents under garb of standing instructions Ex.RW1/B which as per respondents were implemented from 1.1.2002 and remained in vogue up April, 2013, as also under the outsourcing policy, have given fictional breaks as well finally terminated his service in March, 2013. He submitted that the standings instructions have already been held illegal by this Court vide Award Ex.PW1/B. Further on assailing Award Ex.PW1/B alongwith similar matters pertaining to the respondents, Hon'ble High Court vide judgement dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has held that the initial engagement of workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent workman did not complete 240 days in a calendar year. Judgement dated 13.11.2018 of Hon'ble High Court has attained finality as the Special Leave Petition preferred by respondent University stands dismissed by Hon'ble Supreme Court vide judgement dated 25.11.2019 passed in Special Leave Petition (CIVIL) Diary No(s) 37890/2019.

11. On the other hand, learned counsel for respondents has argued that petitioner was engaged on contractual basis to do manual work on seasonal basis for specific spells of 89 days and

in 2001 petitioner left the job at his own will. He further submitted that as petitioner did not work for 240 days in any calendar year, therefore, he is not entitled for any of the reliefs claimed.

12. For the reasons to be recorded hereinafter, findings of this Court on above issues are as under:—

Issue No.1	:	Yes
Issue No.2	:	As per discussion
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Relief	:	Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 5

13. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

14. The claim of petitioner is that he was engaged as daily waged labourer w.e.f. year 1996 and he worked interruptedly upto February, 2013 as he was given fictional breaks by respondents. Respondents have denied engagement of petitioner from 1996 to 2013, however, they have asserted in the reply that petitioner worked in different spells from 1996 to year 2001 and left the job at his own will. They have denied giving fictional breaks to not let petitioner complete 240 days for the purpose of continuous service. Respondents' further case is that as per standing instructions Ex.RW1/B, the labourer was engaged on contractual basis to do manual work on seasonal basis for specific spell of 89 days whereafter his services were automatically terminated. Respondents have pleaded that the workman could work atleast two spells after break of 15 days in each spell whole of the year and no seniority was maintained as well these instructions were in vogue upto April, 2013.

15. Against aforesaid factual matrix, on analysis of evidence, it is observed that petitioner has not specifically averred or deposed his date of engagement, though he stated about year 1996. RW1 has admitted in cross-examination that petitioner was engaged in year 1996 but he also has not specified the date or month of engagement. The month wise attendance of petitioner Ex.RW1/H, not disputed by either of the parties, mentions engagement of petitioner on muster roll basis in Bajaura. As per Ex.RW1/H petitioner has worked for 05 days in 21st December to 31st December, 1996, 75 days in 1997, 74 days in 1998, 139 days in 1999, 169 days in 2000 and 89 days in 2001, whereafter, against year 2002, it is mentioned that policy regarding engagement of labour on contractual basis were opted which were applicable w.e.f. 1.1.2002. RW1 though has denied that petitioner has worked till year 2013 but self stated that petitioner has worked on muster roll basis till 2001 and thereafter he had worked on contractual basis. Thus, the initial engagement is evident as between 21.12.1996 - 31.12.1996 per Ex.RW1/H on muster rolls and petitioner worked till 2001, whereafter petitioner has worked till 2013 as deposed by petitioner.

16. The pivotal question is whether fictional breaks in service were given to petitioner by the respondents. The plea of respondents that petitioner left the work in 2001 cannot be accepted as

petitioner has denied the same as also RW1 has admitted having not issued any notice to the petitioner for alleged abandonment of work. The plea of abandonment is required to be proved like any other plea but the same has not been done by the respondents. Respondents have also not established that respondent University/Research Station is a seasonal industry.

17. Another vital aspect of the matter is categoric admission of RW1 that workers mentioned at serial No. 219 to 299 in seniority list Ex.RW1/J are junior to the petitioner and have worked regularly in the university which proves that the aforementioned workers have all completed more than 240 days and were engaged/employed later than the petitioner. This proves two aspects, one that sufficient work was available as the juniors had regularly worked who completed more than 240 days. Secondly, the engagement of junior workers and disengaging petitioner from time to time between years 1996 to February, 2013 and not letting him complete 240 days in a calendar year for the purpose of continuous service is discriminatory and unfair labour practice on part of the respondents in terms of Section 2(ra) specified in Clause 10 of the Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

> "2(10) To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen".

18. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent university being the instrumentality of State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a daily wager. He cannot be deprived benevolent provisions of the Act as disengaging him from time to time is nothing but refusal by the respondents to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. The plea of abandonment, seasonal work and engagement of petitioner on contractual basis is camouflage. The aforementioned admission of RW1 also proves violation of Sections 25-G and 25-H of the Act as well violation of Articles 14 and 16 of the Constitution being discriminatory and arbitrary as the petitioner for no apparent cause has been discriminated viz-a-viz his juniors aforementioned.

19. Our Hon'ble High Court in recent judgement ***Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215*** has held the following:

> "Beli Ram *vs.* State of H.P. and others decided on 02.06.2009, in which this Court has held as under:—
>
> > "The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from

1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15.06.2009, this Court has held as under:—

"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

20. It is also significant to note observations of Hon'ble High Court of Himachal Pradesh in ***Manoj Kumar Sharma vs. HRTC & Anr. 2007 LLR 1155*** wherein it is held as under:—

"…….(17) Hon'ble Supreme Court has held in Haryana State Electronic Department Corporation Limited v. Mamni, (2006) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and half years, in such circumstances, the Hon'ble Supreme Court has held the termination not bona fide but adopted to defeat the object of the Act. Thus, it is not covered by section 2 (oo) (bb) of the Industrial Disputes Act, 1947.

(18) In the present case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. This practice has been adopted by the management of respondent corporation to defeat the provisions of Section 25(F) of the Industrial Disputes Act, 1947. The letter dated 29-3-2001 issued by the Managing Director to all the Divisional Manager of the corporation-respondent amounts to unfair labour practice……"

21. Now coming to issue no.5 whether petitioner was engaged as labourer on contractual basis to do manual work on seasonal basis as alleged, it is observed that the answer certainly is in the negative for the reason that there is no contract alleged or brought on record by the respondents proving appointment of petitioner on contractual basis. The defence of respondents that in terms of

standing instructions Ex.RW1/B respondents engaged petitioner on contractual basis for 89 days is altogether a camouflage not to let petitioner complete 240 days and deprive the benefit of continuous service.

22. This Court finds merit in the submissions of learned counsel for petitioner that the standing instructions Ex.RW1/B are of no legal consequence as in Award Ex.PW1/B passed by this Court, the defence based on said standing instructions has already met with failure. Hon'ble High Court of Himachal Pradesh vide its decision dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has already dealt with this controversy and observed as under:—

> "……10. It is a matter of record that the respondent workman served the petitioners as an unskilled labourer from the year 2006 to 09.09.2014 when his services were terminated without any notice or retrenchment compensation. Record also demonstrates that initially the engagement of the workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent-workman did not complete 240 days in a calendar year. It is also evident from the record that respondent was initially engaged on 17.07.2006 and he continued to work with the petitioners till 20.07.2012, whereafter he was engaged from 15.07.2013 to 30.09.2014 for different number of working days through outsourcing agency of manpower, as per the Outsource Policy introduced *w.e.f.* April 2013. However, there is no documentary evidence suggesting that at any stage the services of the respondent-workman were placed at the disposal of M/S Shimla Cleanways by the petitioners.
>
> 11. It is apparent from the record that there is violation of Section 25-G of the Industrial Disputes Act, 1947 as workmen, namely, Asha Devi and Tara Chand, who were engaged on 13.07.2009 were permitted to complete more than 240 days in the years 2010, 2011, 2012 and also 2013, whereas on account of intermittent breaks given to the respondent-workman, he was not permitted to complete 240 days in a calendar year. Therefore, the termination of services of the respondent-workman in the year 2014 without complying with the provisions of Section 25-F amounts to violation of the provisions of the Industrial Disputes Act, 1947. It has also been rightly held by learned Labour Court that but for the fictional breaks granted to the respondent-workman, he would have completed "continuous service" in a year as envisaged under Section 25-B of the Industrial Disputes Act, 1947. This also proves that the petitioners gave deliberate breaks to the respondent-workman so that he could not complete 240 days in a calendar year. The factum of disengaging the respondent-workman periodically and retaining juniors also stands borne out from the record. In this view of the matter, we do not find any infirmity with the findings returned by the learned Labour Court directing reengagement of the services of the respondent-workman forthwith alongwith seniority and continuity in service……"

23. The judgement dated 13.11.2018 of Hon'ble High Court of Himachal Pradesh supra has attained finality as the Special Leave Petition (CIVIL) Diary No(s).37890/2019 titled The Dean College of Horticulture and Forestry Neri & Anr. vs. Joginder Singh arising out of final judgement dated 13.11.2018 aforementioned stands dismissed by Hon'ble Supreme Court.

24. Peculiar aspect of the matter is how service condition of the petitioner has been changed without issuance of any notice in terms of Section 9A of the Act has not been explained by the respondents. Petitioner has never consented to work on contractual basis.

25. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670*** wherein the wages being paid on piece rate by the

Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

> "[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec. 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent- Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item l in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the l.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

26. Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India*** supra has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

27. Thus, the arbitrary change in service condition of petitioner from working on muster rolls to contractual working is illegal in terms of Section 9A of the Act and cannot be countenanced. Consequently, it is held that there has been time to time termination of services of the petitioner by the respondents from initial engagement in December, 1996 to February, 2013 which are fictional/artificial as well there was final termination in March, 2013. The same are illegal and unjustified. Issue no.1 is accordingly decided in affirmative and issue no.5 in the negative.

ISSUE No. 2

28. As the fictional breaks given to the petitioner from initial engagement in December,1996 to year 2013 as well final termination during March, 2013 are declared unjustified and illegal, petitioner is held entitled to be deemed in continuous service from his initial date of engagement in December, 1996 and is liable to be reinstated forthwith. Petitioner is also entitled to

consequential benefits of seniority from his initial engagement in December, 1996 except back wages as petitioner has not deposed/averred as to how he has been able to maintain himself in absence of being gainfully employed/working. Petitioner in his affidavit Ex.PW1/A mentioned him 37 years of age and it cannot be presumed that person of such age would remain without work for long since year 2013. Issue no.2 is decided in above terms.

ISSUE No. 3

29. In view of positive findings on issues no.1 and 2, the claim petition is held maintainable. Even otherwise, respondents have not proved or established the petition to be not maintainable. Accordingly, issued no.3 is answered in negative against the respondents.

ISSUE No. 4

30. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, ***(1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that: "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

31. There is no unreasonable delay by petitioner in raising the industrial dispute. Further, the reference by appropriate Government made in February, 2016 does not raise this issue as also makes reference to letter dated 9.12.2014 of Labour -cum-Conciliation Officer, Kullu. Thus, the claim petition is not time barred. Accordingly, issue no.4 is answered in negative against respondents.

ISSUE No. 6

32. Respondents have averred in the preliminary objections that the Director of Research of University, is the principal employer under the policy of outsourcing who has not been arrayed as a necessary party. Policy of outsourcing is stated to be introduced by the university w.e.f. 1st May, 2013 vide notification dated 30.4.2013. However, the petitioner was engaged in 1996 and was finally terminated in March, 2013, therefore said policy of outsourcing is not material in this case. Furthermore, the Associate Director respondent no.2 is the relevant and necessary party in terms of reference, who stands arrayed in the claim petition as well. Consequently, this issue is answered in negative against the respondents.

RELIEF

33. As a sequel to the findings of this Court on the aforementioned issues, the claim petition is allowed in part. It is held that time to time artificial breaks in service given to petitioner by respondents from his initial engagement in December, 1996 to February, 2013 as well final termination during March, 2013 are illegal and unjustified. Respondents are directed to re-engage the petitioner forthwith, who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in December, 1996. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged labourer, **except back wages**. His seniority shall be reckoned from the date of initial engagement in December, 1996. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2022.

Sd/-
(ARVIND MALHOTRA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)**

Ref. No.	:	109/2016
Date of Institution	:	04-3-2016
Date of Decision	:	25-02-2022

Shri Ram Lal s/o Shri Saran, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P.

2. The Associate Director, (R&E), Dr. Y. S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, H.P. . .*Respondents*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Sh. Vijay Kaundal, Ld. Advocate Sh. Rajat Chaudhary, Ld. Advocate
For the Respondents	:	Sh. Munish Kumar, Ld. Advocate

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

> "Whether time to time termination of the services of Shri Ram Lal s/o Shri Saran, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. during year, 1992 to year, 2010 and finally during year, 2010 (as alleged by workman) by (i) the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. (ii) the Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. In nutshell, the facts pleaded by petitioner in statement of claim are as follows. Petitioner was engaged as daily waged labourer by respondent no. 2 w.e.f. year 1992 and he interruptedly worked upto year 2010 on muster rolls alongwith other co-workmen. From 1992 to 2010, services of petitioner were engaged and disengaged by respondents giving fictional breaks, not letting him complete 240 days for the purpose of continuous service under Section 25-B of the Act. Respondent no.2 engaged 30 labourers on daily waged basis in Regional Research Station, Bajaura, Kullu in two batches who were terminated on completion of 89 days, which practice continued till year 2010. All of sudden services of petitioner were finally and unlawfully terminated during year 2010 without complying the mandatory provisions of the Act. Respondents neither issued any show cause notice, charge-sheet, conducted any inquiry nor paid one month's pay in lieu of notice period, retrenchment compensation and without complying the same every termination is null, void ab-initio.

3. Petitioner has further claimed that principle of 'last come first go' was not followed as junior workmen in two batches namely Chet Ram (1996), Khem Singh II (1998), Om Chand (2001) and others were retained, which is violation of Section 25-G of the Act. Services of one Nanak Chand engaged by respondent no.2 in 1993 on muster rolls were regularized on completion of 240 days in each calendar year. After termination of the services of petitioner work has been assigned to the contractor by respondent no.2 and fresh hands have been engaged by the department in the roll of contractor namely M/s Shimla Cleanways. The act of respondents to engage services of petitioner and co-workmen in two spells in order to defeat their right of permanent workmen is unfair labour practice as per 5th Schedule Clause 6, 9 and 10 of the Act. Petitioner has further claimed to be not gainfully employed anywhere and thus he prayed for setting aside illegal breaks, condoning the break period with seniority and back wages as also setting aside the final termination in year 2010 with reinstatement. He also prayed for considering the case of petitioner for regularization and litigation costs of Rs.15,000/-.

4. Respondents contested the claim by filing common reply raising preliminary objections qua maintainability, petition barred by limitation. It is averred in the preliminary objections that as per standing instructions implemented by university w.e.f. 1.1.2002 labourer was engaged on contractual basis to do manual work on seasonal basis by needy departments/research stations at fixed wages for specific spell of 89 days, whereafter his services were automatically terminated in accordance with terms and conditions of engagement, non joinder of necessary party i.e. Director of Research of the university as principal employer under the policy of outsourcing. On merits, respondents submitted that petitioner was engaged as daily paid labourer during year 1992 by respondent no.2 to do manual seasonal work at Regional Horticulture Research Station, Bajaura. He worked in different spells from 1992 to 2001 and left the job of his own. Petitioner has not completed 240 days in any calendar year. Respondents denied giving fictional breaks to the petitioner. Shri Nanak Chand s/o Shri Gulab Chand was engaged as daily paid labourer on 9.3.1992 by respondent no.2 and his services were regularized in accordance with the instructions of Secretary (Personnel) to the Govt. of Himachal Pradesh vide office order dated 30.4.2012. It is further submitted that seniority of those daily paid labourers was maintained who had completed 240 days during calendar year. Respondents denied the claim of petitioner and prayed for dismissal of the claim petition.

5. Rejoinder was filed by the petitioner reiterating contents of petition and denying those of reply filed by respondents.

6. On the pleadings of parties, following issues were framed on 19.3.2019:—

1. Whether time to time termination of services of the petitioner by the respondents during year, 1992 to year, 2010 and finally during year, 2010 is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in present form, as alleged? . .*OPR.*

4. Whether the claim petition is time barred, as alleged? . .*OPR*

5. Whether the petitioner was engaged as a labourer on contractual basis to do manual work on seasonal basis, as alleged? . .*OPR.*

6. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? . .*OPR.*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner Sh. Ram Lal appeared as PW1 and deposed his claim through sworn affidavit Ex.PW1/A, as contained in the claim petition. He also tendered in evidence copy of Award dated 24.4.2018 Ex.PW1/B passed by this Court whereby Shri Rajesh Kumar was ordered to be re-engaged by the respondents i.e. The Dean, College of Horticulture and Forestry Neri and The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan. In cross-examination, petitioner denied not having completed 240 days in any year as also his engagement for seasonal work. He denied engagement as per the standing instructions. He also denied working with M/s Shimla Clean Ways (Contractor). He admitted that he was engaged for 89 days. He denied that he voluntarily left the work on completion of 89 days.

8. On the other hand, respondents examined Shri Bhupinder Singh Thakur, Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station, Bajaura, District Kullu as RW1, who deposed the defence of respondents vide his affidavit Ex.RW1/A, as contained in the reply. He also tendered in evidence copy of standing instructions dated 5.12.2001 from the Registrar Ex.RW1/B regarding engagement of labour on contractual basis, copy of letter dated 14.6.2002 Ex.RW1/C, copy of notification dated 30.4.2013 Ex.RW1/D regarding outsourcing of unskilled labour services, copy of notification dated 13.8.2014 Ex.RW1/E regarding extension of contract in favour of M/s Shimla Clean Ways, copy of notification dated 31.3.2015 Ex.RW1/F regarding outsourcing unskilled labour services to M/s. Rainbow Enterprises, copy of licence of contractor dated 18.9.2015 Ex.RW1/G, copy of month wise attendance of petitioner Ex.RW1/H, copies of office memorandums/tentative seniority lists Ex.RW1/I to RW1/W as stood during period 31.12.1999 to 31.12.2014 and copy of list of old records to be destroyed Ex.RW1/X. In cross-examination, he admitted that petitioner was engaged in year 1992 and at the time of engagement of petitioner on work no appointment letter was issued nor terms and conditions settled. He further deposed that they have not issued any notice to the petitioner for alleged abandonment of work. He denied petitioner having worked till 2010 but self stated he worked on muster roll basis till 2001 and thereafter he worked on contractual basis. He claimed ignorance if notice under Section 9A (a) of the Act was given for changing the work of petitioner from muster rolls to contract basis. He was not sure if petitioner has worked on contract basis from 1.1.2002 till year 2010. He admitted that workers mentioned at serial Nos. 33 to 299 in seniority list Ex.RW1/J are junior to the petitioner and have worked regularly in the University. He claimed ignorance if workers at serial nos.168 to 170 in seniority list Ex.RW1/P and workers at serial No.29 to 33 in tentative seniority list Ex.RW1/S are on the rolls of University. He further deposed that the workers mentioned at serial Nos. 20 & 21 in seniority list Ex.RW1/W might have been appointed in year 2013.

9. I have heard learned counsel for the parties at length and carefully considered the material on record.

10. Learned counsel for petitioner argued that petitioner has served the respondents as daily wager throughout his engagement in year 1992 to 2010 but respondents under garb of standing instructions Ex.RW1/B which as per respondents were implemented from 1.1.2002 and remained in vogue up April, 2013, as also under the outsourcing policy, have given fictional breaks as well finally terminated his service in year 2010. He submitted that the standings instructions have already been held illegal by this Court vide Award Ex.PW1/B. Further on assailing Award Ex.PW1/B alongwith similar matters pertaining to the respondents, Hon'ble High Court vide judgEment dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has held that the initial engagement of workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent workman did not complete 240 days in a calendar year. JudgEment dated 13.11.2018 of Hon'ble High Court has attained finality as the Special Leave Petition preferred by respondent University stands dismissed by Hon'ble Supreme Court vide judgEment dated 25.11.2019 passed in Special Leave Petition (CIVIL) Diary No(s) 37890/2019.

11. On the other hand, learned counsel for respondents has argued that petitioner was engaged on contractual basis to do manual work on seasonal basis for specific spells of 89 days and in 2001 petitioner left the job at his own will. He further submitted that as petitioner did not work for 240 days in any calendar year, therefore, he is not entitled for any of the reliefs claimed.

12. For the reasons to be recorded hereinafter, findings of this Court on above issues are as under:—

Issue No.1	:	Yes
Issue No.2	:	As per discussion
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Relief	:	Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 5

13. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

14. The claim of petitioner is that he was engaged as daily waged labourer w.e.f. 1992 and he worked interruptedly upto 2010 as he was given fictional breaks by respondents. Respondents have denied engagement of petitioner from 1992 to 2010, however, they have asserted in the reply that petitioner worked in different spells from 1992 to year 2001 and left the job at his own will. They have denied giving fictional breaks to not let petitioner complete 240 days for the purpose of continuous service. Respondents' further case is that as per standing instructions Ex.RW1/B, the labourer was engaged on contractual basis to do manual work on seasonal basis for specific spell of 89 days whereafter his services were automatically terminated. Respondents have pleaded that the workman could work atleast two spells after break of 15 days in each spell whole of the year and no seniority was maintained as well these instructions were in vogue upto April, 2013.

15. Against aforesaid factual matrix, on analysis of evidence, it is observed that petitioner has not specifically averred or deposed his date of engagement, though he stated about year 1992. RW1 has admitted in cross-examination that petitioner was engaged in year 1992 but he also has not specified the date or month of engagement. The month wise attendance of petitioner Ex.RW1/H, not disputed by either of the parties, mentions engagement on muster roll/89 days basis at Bajaura between 21st January to 20th February, 1992. As per Ex.RW1/H petitioner has worked for 66 days in 1992, 144 days in 1993, 184 days in 1994, 231 days in 1995, 174 days in 1996, 136 days in 1997, 205 days in 1998, 185 days in 1999, 226 days in 2000 and 172 days in 2001, whereafter, against year 2002 it is mentioned that policy regarding engagement of labour for 89 days on contractual basis was opted which was applicable *w.e.f.* 1.1.2002. RW1 though has denied that petitioner has worked till year 2010 but self stated that petitioner has worked on muster roll basis till 2001 and thereafter he had worked on contractual basis. Thus, the initial engagement is evident in January, 1992 per Ex.RW1/H on muster rolls and petitioner worked till 2001, whereafter petitioner has worked on contractual basis till 2010 as pleaded by petitioner in the rejoinder.

16. The pivotal question is whether fictional breaks in service were given to petitioner by the respondents. The plea of respondents that petitioner left the work in 2001 cannot be accepted as petitioner has denied the same as also RW1 has admitted having not issued any notice to the petitioner for alleged abandonment of work. The plea of abandonment is required to be proved like any other plea but the same has not been done by the respondents. Respondents have also not established that respondent University/Research Station is a seasonal industry.

17. Another vital aspect of the matter is categoric admission of RW1 that workers mentioned at serial no. 33 to 299 in seniority list Ex.RW1/J are junior to the petitioner and have worked regularly in the university which proves that the aforementioned workers have all completed more than 240 days and were engaged/employed later than the petitioner. This proves two aspects, one that sufficient work was available as the juniors had regularly worked who completed more than 240 days. Secondly, the engagement of junior workers and disengaging petitioner from time to time between years 1992 to 2010 and not letting him complete 240 days in a calendar year for the purpose of continuous service is discriminatory and unfair labour practice on part of the respondents in terms of Section 2(ra) specified in Clause 10 of the Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

> "2(10) To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen".

18. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent university being the instrumentality of State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a daily wager. He cannot be deprived benevolent provisions of the Act as disengaging him from time to time is nothing but refusal by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. The plea of abandonment, seasonal work and engagement of petitioner on contractual basis is camouflage. The aforementioned admission of RW1 also proves violation of Sections 25-G and 25-H of the Act as well violation of Articles 14 and 16 of the Constitution being discriminatory and arbitrary as the petitioner for no apparent cause has been discriminated viz-a-viz his juniors aforementioned.

19. Our Hon'ble High Court in recent judgement ***Keshav Ram vs. State of H.P. & Others 2020 Law Suit (HP) 215*** has held the following:

> "Beli Ram *vs.* State of H.P. and others decided on 02.06.2009, in which this Court has held as under:—

"The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15.06.2009, this Court has held as under:—

"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

20. It is also significant to note observations of Hon'ble High Court of Himachal Pradesh in ***Manoj Kumar Sharma vs. HRTC & Anr. 2007 LLR 1155*** wherein it is held as under:—

"…….(17) Hon'ble Supreme Court has held in Haryana State Electronic Department Corporation Limited v. Mamni, (2006) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and half years, in such

circumstances, the Hon'ble Supreme Court has held the termination not bona fide but adopted to defeat the object of the Act. Thus, it is not covered by section 2 (oo) (bb) of the Industrial Disputes Act, 1947.

(18) In the present case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. This practice has been adopted by the management of respondent corporation to defeat the provisions of Section 25(F) of the Industrial Disputes Act, 1947. The letter dated 29-3-2001 issued by the Managing Director to all the Divisional Manager of the corporation-respondent amounts to unfair labour practice……"

21. Now coming to issue no.5 whether petitioner was engaged as labourer on contractual basis to do manual work on seasonal basis as alleged, it is observed that the answer certainly is in the negative for the reason that there is no contract alleged or brought on record by the respondents proving appointment of petitioner on contractual basis. The defence of respondents that in terms of standing instructions Ex.RW1/B respondents engaged petitioner on contractual basis for 89 days is altogether a camouflage not to let petitioner complete 240 days and deprive the benefit of continuous service.

22. This Court findings merit in the submissions of learned counsel for petitioner that the standing instructions Ex.RW1/B are of no legal consequence as in Award Ex.PW1/B passed by this Court, the defence based on said standing instructions has already met with failure. Hon'ble High Court of Himachal Pradesh vide its decision dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has already dealt with this controversy and observed as under:—

"……10. It is a matter of record that the respondent workman served the petitioners as an unskilled labourer from the year 2006 to 09.09.2014 when his services were terminated without any notice or retrenchment compensation. Record also demonstrates that initially the engagement of the workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent-workman did not complete 240 days in a calendar year. It is also evident from the record that respondent was initially engaged on 17.07.2006 and he continued to work with the petitioners till 20.07.2012, whereafter he was engaged from 15.07.2013 to 30.09.2014 for different number of working days through outsourcing agency of manpower, as per the Outsource Policy introduced w.e.f. April 2013. However, there is no documentary evidence suggesting that at any stage the services of the respondent-workman were placed at the disposal of M/S Shimla Cleanways by the petitioners.

11. It is apparent from the record that there is violation of Section 25-G of the Industrial Disputes Act, 1947 as workmen, namely, Asha Devi and Tara Chand, who were engaged on 13.07.2009 were permitted to complete more than 240 days in the years 2010, 2011, 2012 and also 2013, whereas on account of intermittent breaks given to the respondent-workman, he was not permitted to complete 240 days in a calendar year. Therefore, the termination of services of the respondent-workman in the year 2014 without complying with the provisions of Section 25-F amounts to violation of the provisions of the Industrial Disputes Act, 1947. It has also been rightly held by learned Labour Court that but for the fictional breaks granted to the respondent-workman, he would have completed "continuous service" in a year as envisaged under Section 25-B of the Industrial Disputes Act, 1947. This also proves that the petitioners gave deliberate breaks to the respondent-workman so that he could not complete 240 days in a calendar year. The factum of disengaging the respondent-workman periodically and retaining juniors also stands borne out from the record. In this view of the matter, we do not find any infirmity with the findings returned by the learned Labour Court

directing reengagement of the services of the respondent-workman forthwith alongwith seniority and continuity in service……"

23. The judgement dated 13.11.2018 of Hon'ble High Court of Himachal Pradesh supra has attained finality as the Special Leave Petition (CIVIL) Diary No(s).37890/2019 titled The Dean College of Horticulture and Forestry Neri & Anr. *vs.* Joginder Singh arising out of final judgement dated 13.11.2018 aforementioned stands dismissed by Hon'ble Apex Court.

24. Peculiar aspect of the matter is how service condition of the petitioner has been changed without issuance of any notice in terms of Section 9A of the Act has not been explained by the respondents. Petitioner has never consented to work on contractual basis.

25. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670*** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

"[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec. 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent- Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item l in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the l.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

26. Hon'ble Apex Court in ***Workmen of Food Corporation of India*** *vs.* ***Food Corporation of India*** supra has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

27. Thus, the arbitrary change in service condition of petitioner from working on muster rolls to contractual working is illegal in terms of Section 9A of the Act and cannot be countenanced. Consequently, it is held that there has been time to time termination of services of the petitioner by the respondents from initial engagement on 1.1.1992 to year 2010 which are fictional/artificial as well there was final termination in year 2010. The same are illegal and unjustified. Issue no.1 is accordingly decided in affirmative and issue no.5 in the negative.

ISSUE No. 2

28. As the fictional breaks given to the petitioner from 1.1.1992 to year 2010 as well final termination during year 2010 are declared unjustified and illegal, petitioner is held entitled to be deemed in continuous service from his initial date of engagement in January, 1992 and is liable to be reinstated forthwith. Petitioner is also entitled to consequential benefits of seniority from his date of initial engagement in January, 1992 except back wages as petitioner has not deposed/averred as to how he has been able to maintain himself in absence of being gainfully employed/working. Petitioner in his affidavit Ex.PW1/A mentioned him 43 years of age and it cannot be presumed that person of such age would remain without work for long since year 2010. Issue no.2 is decided in above terms.

ISSUE No. 3

29. In view of positive findings on issues No.1 and 2, the claim petition is held maintainable. Even otherwise, respondents have not proved or established the petition to be not maintainable. Accordingly, issued No. 3 is answered in negative against the respondent.

ISSUE No. 4

30. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, ***(1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

31. There is no unreasonable delay by petitioner in raising the industrial dispute. Further, the reference by appropriate Government made in February, 2016 does not raise this issue as also makes reference to letter dated 9.12.2014 of Labour-*cum*-Conciliation Officer, Kullu. Thus, the claim petition is not time barred. Accordingly, issue no.4 is answered in negative against respondents.

ISSUE No. 6

32. Respondents have averred in the preliminary objections that the Director of Research of University, is the principal employer under the policy of outsourcing who has not been arrayed as a necessary party. Policy of outsourcing is stated to be introduced by the university *w.e.f.* 1st May, 2013 *vide* notification dated 30.4.2013. However, the petitioner was engaged in 1992 and was finally terminated in 2010, therefore said policy of outsourcing is not material in this case. Furthermore, the Associate Director respondent No. 2 is the relevant and necessary party in terms of reference, who stands arrayed in the claim petition as well. Consequently, this issue is answered in negative against the respondents.

RELIEF

33. As a sequel to the findings of this Court on the aforementioned issues, the claim petition is allowed in part. It is held that time to time artificial breaks in service given to petitioner by respondents from January, 1992 to year 2010 as well final termination during year 2010 are illegal and unjustified. Respondents are directed to re-engage the petitioner forthwith, who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in January, 1992. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged labourer, **except back wages**. His seniority shall be reckoned from the date of initial engagement in January, 1992. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2022.

Sd/-
(ARVIND MALHOTRA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)**

Ref. No.	:	107/2016
Date of Institution	:	04-3-2016
Date of Decision	:	25-02-2022

Shri Dev Raj s/o Shri Sidhu Ram, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P.

2. The Associate Director, (R&E), Dr. Y. S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Sh. Vijay Kaundal, Ld. Advocate Sh. Rajat Chaudhary, Ld. Advocate
For the Respondents	:	Sh. Munish Kumar, Ld. Advocate

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

> "Whether time to time termination of the services of Shri Dev Raj s/o Shri Sidhu Ram, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. during year, 1992 to year, 2012 and finally during year, 2012 (as alleged by workman) by (i) the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. (ii) the Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. In nutshell, the facts pleaded by petitioner in statement of claim are as follows. Petitioner was engaged as daily waged labourer by respondent no.2 *w.e.f.* year 1992 and he interruptedly worked upto year 2012 on muster rolls basis alongwith other co-workmen. From 1992 to 2012, services of petitioner were engaged and disengaged by respondents giving fictional breaks, not letting him complete 240 days for the purpose of continuous service under Section 25-B of the Act. Respondent No. 2 engaged 30 labourers on daily waged basis in Regional Research Station, Bajaura, Kullu in two batches who were terminated on completion of 89 days, which practice continued till year 2012. All of sudden services of petitioner were finally and unlawfully terminated during year 2012 without complying the mandatory provisions of the Act. Respondents neither issued any show cause notice, charge-sheet, conducted any inquiry nor paid one month's pay in lieu of notice period, retrenchment compensation and without complying the same every termination is null, void ab-initio.

3. Petitioner has further claimed that principle of 'last come first go' was not followed as junior workmen in two batches namely Chet Ram (1996), Khem Singh II (1998), Om Chand (2001) and others were retained, which is violation of Section 25-G of the Act. Services of one Nanak Chand engaged by respondent No. 2 in 1993 on muster rolls were regularized on completion of 240 days in each calendar year. After termination of the services of petitioner work has been assigned to the contractor by respondent No. 2 and fresh hands have been engaged by the department in the roll of contractor namely M/s Shimla Cleanways. The act of respondents to engage services of petitioner and co-workmen in two spells in order to defeat their right of permanent workmen is unfair labour practice as per 5th Schedule Clause 6, 9 and 10 of the Act. Petitioner has further claimed to be not gainfully employed anywhere and thus he prayed for setting aside illegal breaks, condoning the break period with seniority and back wages as also setting aside the final termination in year 2012 with reinstatement. He also prayed for considering the case of petitioner for regularization and litigation costs of Rs.15,000/-.

4. Respondents contested the claim by filing common reply raising preliminary objections qua maintainability, petition barred by limitation. It is averred in the preliminary objections that as per standing instructions implemented by university *w.e.f.* 1.1.2002 labourers were engaged on contractual basis to do manual work on seasonal basis by needy departments/research stations at fixed wages for specific spell of 89 days, whereafter services of petitioner automatically terminated in accordance with terms and conditions of engagement, non joinder of necessary party *i.e.* Director of Research of the university as principal employer under the policy of outsourcing. On merits, respondents submitted that petitioner was engaged as daily paid labourer during year 1993 by respondent No. 2 to do manual seasonal work at Regional Horticulture Research Station. He worked in different spells from 1993 to 2001 and left the job of his own. Petitioner has not completed 240 days in any calendar year. Respondents denied giving

fictional breaks to the petitioner. Shri Nanak Chand s/o Shri Gulab Chand was engaged as daily paid labourer on 9.3.1992 by respondent No.2 and his services were regularized in accordance with the instructions of Secretary (Personnel) to the Govt. of Himachal Pradesh *vide* office order dated 30.4.2012. It is further submitted that seniority of those daily paid labourers was maintained who had completed 240 days during calendar year. Respondents denied the claim of petitioner and prayed for dismissal of the claim petition.

5. Rejoinder was filed by the petitioner reiterating contents of petition and denying those of reply filed by respondents.

6. On the pleadings of parties, following issues were framed on 19.3.2019:—

1. Whether time to time termination of services of the petitioner by the respondents during year, 1992 to year, 2012 and finally during year, 2012 is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in present form, as alleged? . .*OPR.*

4. Whether the claim petition is time barred, as alleged? ..*OPR.*

5. Whether the petitioner was engaged as a labourer on contractual basis to do manual work on seasonal basis, as alleged? . .*OPR.*

6. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? . .*OPR.*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner Sh. Dev Raj appeared as PW1 and deposed his claim through sworn affidavit Ex.PW1/A, as contained in the claim petition. He also tendered in evidence copy of Award dated 24.4.2018 Ex.PW1/B passed by this Court whereby Shri Rajesh Kumar was ordered to be re-engaged by the respondents i.e. The Dean, College of Horticulture and Forestry Neri and The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan. In cross-examination, petitioner denied not having completed 240 days as also his engagement for seasonal work. He denied engagement as per the standing instructions. He also denied working with M/s Shimla Clean Ways (Contractor). He admitted that he was engaged for 89 days. He denied that he voluntarily left the work on completion of 89 days.

8. On the other hand, respondents examined Shri Bhupinder Singh Thakur, Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station, Bajaura, District Kullu as RW1, who deposed the defence of respondents vide his affidavit Ex.RW1/A, as contained in the reply. He also tendered in evidence copy of standing instructions dated 5.12.2001 from the Registrar Ex.RW1/B regarding engagement of labour on contractual basis, copy of letter dated 14.6.2002 Ex.RW1/C, copy of notification dated 30.4.2013 Ex.RW1/D regarding outsourcing of unskilled labour services, copy of notification dated 13.8.2014 Ex.RW1/E regarding extension of contract in favour of M/s Shimla Clean Ways, copy of notification dated 31.3.2015 Ex.RW1/F regarding outsourcing unskilled labour services to M/s. Rainbow Enterprises, copy of licence of contractor dated 18.9.2015 Ex.RW1/G, copy of month

wise attendance of petitioner Ex.RW1/H, copies of office memorandums/tentative seniority lists Ex.RW1/I to RW1/W as stood during period 31.12.1999 to 31.12.2014 and copy of list of old records to be destroyed Ex.RW1/X. In cross-examination, he admitted that petitioner was engaged in year 1992 and at the time of engagement of petitioner on work no appointment letter was issued nor terms and conditions settled. He further deposed that they have not issued any notice to the petitioner for alleged abandonment of work. He denied petitioner having worked till 2012 but self stated he worked on muster roll basis till 2001 and thereafter he worked on contractual basis. He claimed ignorance if notice under Section 9A (a) of the Act was given for changing the work of petitioner from muster rolls to contract basis. He was not sure if petitioner has worked on contract basis from 1.1.2002 till year 2012. He admitted that workers mentioned at serial Nos. 33 to 299 in seniority list Ex.RW1/J are junior to the petitioner and have worked regularly in the University. He claimed ignorance if workers at serial nos.168 to 170 in seniority list Ex.RW1/P and workers at serial No.29 to 33 in tentative seniority list Ex.RW1/S are on the rolls of University. He further deposed that the workers mentioned at serial Nos. 20 & 21 in seniority list Ex.RW1/W might have been appointed in year 2013.

9. I have heard learned counsel for the parties at length and carefully considered the material on record.

10. Learned counsel for petitioner argued that petitioner has served the respondents as daily wager throughout his engagement in year 1992 to 2012 but respondents under garb of standing instructions Ex.RW1/B which as per respondents were implemented from 1.1.2002 and remained in vogue up April, 2013, as also under the outsourcing policy, have given fictional breaks as well finally terminated his service in year 2012. He submitted that the standings instructions have already been held illegal by this Court vide Award Ex.PW1/B. Further on assailing Award Ex.PW1/B alongwith similar matters pertaining to the respondents, Hon'ble High Court vide judgement dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has held that the initial engagement of workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent workman did not complete 240 days in a calendar year. Judgement dated 13.11.2018 of Hon'ble High Court has attained finality as the Special Leave Petition preferred by respondent University stands dismissed by Hon'ble Supreme Court vide judgement dated 25.11.2019 passed in Special Leave Petition (CIVIL) Diary No(s) 37890/2019.

11. On the other hand, learned counsel for respondents has argued that petitioner was engaged on contractual basis to do manual work on seasonal basis for specific spells of 89 days and in 2001 petitioner left the job at his own will. He further submitted that as petitioner did not work for 240 days in any calendar year, therefore, he is not entitled for any of the reliefs claimed.

12. For the reasons to be recorded hereinafter, findings of this Court on above issues are as under:—

Issue No.1	:	Yes
Issue No.2	:	As per discussion
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Relief	:	Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 5

13. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

14. The claim of petitioner is that he was engaged as daily waged labourer w.e.f. 1992 and he worked interruptedly upto 2012 as he was given fictional breaks by respondents. Respondents have denied engagement of petitioner from 1992 to 2012, however, they have asserted in the reply that petitioner worked in different spells from 1993 to year 2001 and left the job at his own will. They have denied giving fictional breaks to not let petitioner complete 240 days for the purpose of continuous service. Respondents' further case is that as per standing instructions Ex.RW1/B, the labourer was engaged on contractual basis to do manual work on seasonal basis for specific spell of 89 days whereafter his services were automatically terminated. Respondents have pleaded that the workman could work atleast two spells after break of 15 days in each spell whole of the year and no seniority was maintained as well these instructions were in vogue upto April, 2013.

15. Against aforesaid factual matrix, on analysis of evidence, it is observed that petitioner has not specifically averred or deposed his date of engagement, though he stated about year 1992. RW1 has admitted in cross-examination that petitioner was engaged in year 1992 but he also has not specified the date or month of engagement. The month wise attendance of petitioner Ex.RW1/H, not disputed by either of the parties, mentions engagement on muster roll/89 days basis in Bajaura on 21.2.1993. As per Ex.RW1/H petitioner has worked for 151 days in 1993, 33 days in 1994, 66 days in 1995, 145 days in 1996, 132 days in 1997, 91 days in 1998, 127 days in 1999, 231 days in 2000 and 172 days in 2001, whereafter, against year 2002, it is mentioned that policy regarding engagement of labour for 89 days on contractual basis was accepted by the University applicable *w.e.f.* 1.1.2002. RW1 though has denied that petitioner has worked till year 2012 but self stated that petitioner has worked on muster roll basis till 2001 and thereafter he had worked on contractual basis. Thus, the initial engagement is evident as 21.2.1993 per Ex.RW1/H on muster rolls and petitioner worked till 2001, whereafter petitioner has further interruptedly worked till 2012 as deposed by petitioner.

16. The pivotal question is whether fictional breaks in service were given to petitioner by the respondents. The plea of respondents that petitioner left the work in 2001 cannot be accepted as petitioner has denied the same as also RW1 has admitted having not issued any notice to the petitioner for alleged abandonment of work. The plea of abandonment is required to be proved like any other plea but the same has not been done by the respondents. Respondents have also not established that respondent University/Research Station is a seasonal industry.

17. Another vital aspect of the matter is categoric admission of RW1 that workers mentioned at serial No. 33 to 299 in seniority list Ex.RW1/J are junior to the petitioner and have worked regularly in the university which proves that the aforementioned workers have all completed more than 240 days and were engaged/employed later than the petitioner. This proves two aspects, one that sufficient work was available as the juniors had regularly worked who completed more than 240 days. Secondly, the engagement of junior workers and disengaging petitioner from time to time between years 1993 to 2001 and not letting him complete 240 days in a calendar year for the purpose of continuous service is discriminatory and unfair labour practice on part of the respondents in terms of Section 2(ra) specified in Clause 10 of the Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

> "2(10) To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen".

18. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent university being the instrumentality of State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a daily wager. He cannot be deprived benevolent provisions of the Act as disengaging him from time to time is nothing but refusal by the respondents to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. The plea of abandonment, seasonal work and engagement of petitioner on contractual basis is camouflage. The aforementioned admission of RW1 also proves violation of Sections 25-G and 25-H of the Act as well violation of Articles 14 and 16 of the Constitution being discriminatory and arbitrary as the petitioner for no apparent cause has been discriminated viz-a-viz his juniors aforementioned.

19. Our Hon'ble High Court in recent judgement ***Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215*** has held the following:

> "Beli Ram vs. State of H.P. and others decided on 02.06.2009, in which this Court has held as under:-—
>
> > "The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.
> >
> > Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."
>
> 9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15.06.2009, this Court has held as under:—
>
> > "It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain

absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

20. It is also significant to note observations of Hon'ble High Court of Himachal Pradesh in ***Manoj Kumar Sharma vs. HRTC & Anr. 2007 LLR 1155*** wherein it is held as under:—

"…….(17) Hon'ble Supreme Court has held in Haryana State Electronic Department Corporation Limited v. Mamni, (2006) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and half years, in such circumstances, the Hon'ble Supreme Court has held the termination not bona fide but adopted to defeat the object of the Act. Thus, it is not covered by section 2 (oo) (bb) of the Industrial Disputes Act, 1947.

(18) In the present case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. This practice has been adopted by the management of respondent corporation to defeat the provisions of Section 25(F) of the Industrial Disputes Act, 1947. The letter dated 29-3-2001 issued by the Managing Director to all the Divisional Manager of the corporation-respondent amounts to unfair labour practice……"

21. Now coming to issue no.5 whether petitioner was engaged as labourer on contractual basis to do manual work on seasonal basis as alleged, it is observed that the answer certainly is in the negative for the reason that there is no contract alleged or brought on record by the respondents proving appointment of petitioner on contractual basis. The defence of respondents that in terms of standing instructions Ex.RW1/B respondents engaged petitioner on contractual basis for 89 days is altogether a camouflage not to let petitioner complete 240 days and deprive the benefit of continuous service.

22. This Court finds merit in the submissions of learned counsel for petitioner that the standing instructions Ex.RW1/B are of no legal consequence as in Award Ex.PW1/B passed by this Court, the defence based on said standing instructions has already met with failure. Hon'ble High Court of Himachal Pradesh vide its decision dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has already dealt with this controversy and observed as under:—

"……10. It is a matter of record that the respondent workman served the petitioners as an unskilled labourer from the year 2006 to 09.09.2014 when his services were terminated without any notice or retrenchment compensation. Record also demonstrates that initially the engagement of the workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent-workman did not complete 240 days in a calendar year. It is also evident from the record that respondent was initially engaged on 17.07.2006 and he continued to work with the petitioners till 20.07.2012, whereafter he was engaged from 15.07.2013 to 30.09.2014 for different number of working days through outsourcing

agency of manpower, as per the Outsource Policy introduced *w.e.f.* April 2013. However, there is no documentary evidence suggesting that at any stage the services of the respondent-workman were placed at the disposal of M/S Shimla Cleanways by the petitioners.

11. It is apparent from the record that there is violation of Section 25-G of the Industrial Disputes Act, 1947 as workmen, namely, Asha Devi and Tara Chand, who were engaged on 13.07.2009 were permitted to complete more than 240 days in the years 2010, 2011, 2012 and also 2013, whereas on account of intermittent breaks given to the respondent-workman, he was not permitted to complete 240 days in a calendar year. Therefore, the termination of services of the respondent-workman in the year 2014 without complying with the provisions of Section 25-F amounts to violation of the provisions of the Industrial Disputes Act, 1947. It has also been rightly held by learned Labour Court that but for the fictional breaks granted to the respondent-workman, he would have completed "continuous service" in a year as envisaged under Section 25-B of the Industrial Disputes Act, 1947. This also proves that the petitioners gave deliberate breaks to the respondent-workman so that he could not complete 240 days in a calendar year. The factum of disengaging the respondent-workman periodically and retaining juniors also stands borne out from the record. In this view of the matter, we do not find any infirmity with the findings returned by the learned Labour Court directing reengagement of the services of the respondent-workman forthwith alongwith seniority and continuity in service……"

23. The judgement dated 13.11.2018 of Hon'ble High Court of Himachal Pradesh supra has attained finality as the Special Leave Petition (CIVIL) Diary No(s).37890/2019 titled The Dean College of Horticulture and Forestry Neri & Anr. *vs.* Joginder Singh arising out of final judgement dated 13.11.2018 aforementioned stands dismissed by Hon'ble Supreme Court.

24. Peculiar aspect of the matter is how service condition of the petitioner has been changed without issuance of any notice in terms of Section 9A of the Act has not been explained by the respondents. Petitioner has never consented to work on contractual basis.

25. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in ***Workmen of Food Corporation of India*** *vs.* ***Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670*** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

"[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec. 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before

effecting a change. No attempt was made on behalf of the respondent- Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item l in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the l.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

26. Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India*** supra has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

27. Thus, the arbitrary change in service condition of petitioner from working on muster rolls to contractual working is illegal in terms of Section 9A of the Act and cannot be countenanced. Consequently, it is held that there has been time to time termination of services of the petitioner by the respondents from initial engagement on 21.2.1993 to year 2012 which are fictional/artificial as well there was final termination in year 2012. The same are illegal and unjustified. Issue no.1 is accordingly decided in affirmative and issue No.5 in the negative.

ISSUE No. 2

28. As the fictional breaks given to the petitioner from 21.2.1993 to year 2012 as well final termination during year 2012 are declared unjustified and illegal, petitioner is held entitled to be deemed in continuous service from his initial date of engagement *i.e.* 21.2.1993 and is liable to be reinstated forthwith. Petitioner is also entitled to consequential benefits of seniority from 21.2.1993 except back wages as petitioner has not deposed/averred as to how he has been able to maintain himself in absence of being gainfully employed/working. Petitioner in his affidavit Ex.PW1/A mentioned him 49 years of age and it cannot be presumed that person of such age would remain without work for long since year 2012. Issue No. 2 is decided in above terms.

ISSUE No. 3

29. In view of positive findings on issues No. 1 and 2, the claim petition is held maintainable. Even otherwise, respondents have not proved or established the petition to be not maintainable. Accordingly, issued no.3 is answered in negative against the respondents.

ISSUE No. 4

30. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, ***(1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:
"*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

31. There is no unreasonable delay by petitioner in raising the industrial dispute. Further, the reference by appropriate Government made in February, 2016 does not raise this issue as also makes reference to letter dated 9.12.2014 of Labour-*cum*-Conciliation Officer, Kullu. Thus, the claim petition is not time barred. Accordingly, issue no.4 is answered in negative against respondents.

ISSUE No. 6

32. Respondents have averred in the preliminary objections that the Director of Research of University, is the principal employer under the policy of outsourcing who has not been arrayed as a necessary party. Policy of outsourcing is stated to be introduced by the university *w.e.f.* 1st May, 2013 vide notification dated 30.4.2013. However, the petitioner was engaged in 1993 and was finally terminated in 2012, therefore said policy of outsourcing is not material in this case. Furthermore, the Associate Director respondent No. 2 is the relevant and necessary party in terms of reference, who stands arrayed in the claim petition as well. Consequently, this issue is answered in negative against the respondents.

RELIEF

33. As a sequel to the findings of this Court on the aforementioned issues, the claim petition is allowed in part. It is held that time to time artificial breaks in service given to petitioner by respondents from 21.2.1993 to year 2012 as well final termination during year 2012 are illegal and unjustified. Respondents are directed to re-engage the petitioner forthwith, who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement *i.e.* 21.2.1993. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged labourer, **except back wages**. His seniority shall be reckoned from the date of initial engagement *i.e.* 21.2.1993. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2022.

Sd/-
(ARVIND MALHOTRA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)

Ref. No.	:	254/2016
Date of Institution	:	03-5-2016
Date of Decision	:	25-02-2022

Shri Chet Ram s/o Shri Dabe Ram, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P.

2. The Associate Director, (R&E), Dr. Y. S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, H.P. . .*Respondents*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vijay Kaundal, Ld. Advocate
Sh. Rajat Chaudhary, Ld. Advocate

For the Respondents : Sh. Munish Kumar, Ld. Advocate

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

> "Whether time to time termination of the services of Shri Chet Ram s/o Shri Dabe Ram, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. during January, 1996 to 24-11-2013 and finally *w.e.f.* 25-11-2013 (as alleged by workman) by (i) the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. (ii) the Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. In nutshell, the facts pleaded by petitioner in statement of claim are as follows. Petitioner was appointed as skilled helper with prior permission of respondent no.1 on daily waged basis by respondent No. 2 *w.e.f.* 1.1.1996 for 89 days and after completion of 89 days his services were unlawfully verbally terminated by respondent no.2 as fictional breaks were given for some days. Thereafter, petitioner's services were again re-engaged in same capacity for 89 days, which practice of engagement and disengagement continued till 24.11.2013. During period 1.1.1996 to 24.11.2013, the respondents have not provided casual card or appointment letter to petitioner and the services of petitioner were terminated by respondents on 25.11.2013 without complying with the mandatory provisions of the Act. Before time to time termination of services and final termination w.e.f. 25.11.2013 respondents have not given any notice or compensation under Section 25-F of the Act and without complying with the same his termination is null, void ab-initio. During service period of petitioner from 01.01.1996 to 24.11.2013 work and conduct of petitioner was fully satisfactory up to mark. Respondents neither issued any show cause notice, charge-sheet nor any inquiry was conducted against petitioner and respondent violated principle of natural justice.

3. Petitioner has further claimed that principle of 'last come first go' was violated by respondents as new persons were engaged in place of petitioner and junior workmen namely Dhimeshwar (2002), Uttam Chand (2003), Kanta Devi (2004) and others were retained by the respondents, which is violation of Sections 25-G and 25-H of the Act. In the month of November, 2013 respondent gave the work to contractor namely M/s. Cleanways Company Shimla and

respondent No. 2 told petitioner to work as helper on the roll of abovementioned contractor which the petitioner refused and due to this reason his services were finally terminated by the respondents. The act of giving fictional breaks by respondents is unfair labour practice as per 5th Schedule Clause 10 of the Act. Petitioner has further claimed to be not gainfully employed anywhere from the date of his unlawful termination *i.e.* 25.11.2013. Petitioner prayed for setting aside time to time termination *w.e.f.* 1.1.1996 to 24.11.2013 and final termination *w.e.f.* 25.11.2013 with reinstatement, full back wages, continuity of service, seniority with consequential service benefits. He also prayed for considering the case of petitioner for regularization and litigation costs of Rs.15,000/-.

4. Respondents contested the claim by filing common reply raising preliminary objections qua maintainability, petition barred by limitation. It is averred in the preliminary objections that as per standing instructions implemented by university *w.e.f.* 1.1.2002 labourer was engaged on contractual basis to do manual work on seasonal basis by needy departments/research stations at fixed wages for specific spell of 89 days, whereafter his services automatically terminated in accordance with terms and conditions of engagement, non joinder of necessary party *i.e.* Director of Research of the university as principal employer under the policy of outsourcing. On merits, respondents submitted that petitioner was engaged as daily paid labourer at Regional Horticulture Research and Training Station, Bajaura on 21.1.1997 to do manual seasonal work and worked upto 2001. Thereafter, he left the work at his own will. Thereafter, all engagement of labourers were made at a fixed salary on contractual basis for a period for 89 days in one spell and two spells in whole of the year after break for atleast 15 days in each spells for seasonal job subject to availability of funds in accordance with standing instructions effective from 1.1.2002. Respondents further submitted that petitioner applied for post of skilled helper under adhoc project on a fixed salary against advertisement No.02/2011 which was co-terminus post with the adhoc project. He was offered appointment letter dated 16.4.2011 to the post of skill helper in adhoc project and he executed agreement. The services of petitioner were terminated after the closure of adhoc project in accordance with terms and condition of his appointment letter. Respondent denied that persons junior to petitioner have been engaged by respondents after disengagement of the services of petitioner from time to time. The Director of Research of respondent university floated tenders for outsourcing unskilled labourer services *w.e.f.* 1.5.2013 and contract for outsourcing was awarded to M/s. Shimla Cleanways. The contract for outsourcing the services of labourers w.e.f. April, 2015 to 31.3.2018 was further awarded to M/s. Rainbow Enterprises. Respondents denied giving fictional breaks to not let petitioner complete 240 days as also the provisions of Sections 25-G and 25-H of the Act. Respondents also denied unfair labour practice and termination of services of petitioner on 24.11.2013. Respondents denied the claim of petitioner and prayed for dismissal of the claim petition.

5. Rejoinder was filed by the petitioner reiterating contents of petition and denying those of reply filed by respondents.

6. On the pleadings of parties, following issues were framed on 19.3.2019:—

1. Whether time to time termination of services of the petitioner by the respondents during year, January, 1996 to 24.11.2013 and finally *w.e.f.* 25.11.2013 is/was illegal and unjustified, as alleged? ..*OPP* .
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.
3. Whether the claim petition is not maintainable in present form, as alleged? . .*OPR*.
4. Whether the claim petition is time barred, as alleged? . .*OPR*.

5. Whether the petitioner was engaged as a labourer on contractual basis to do manual work on seasonal basis, as alleged? . .*OPR.*

6. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? . .*OPR.*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner Sh. Chet Ram appeared as PW1 and deposed his claim through sworn affidavit Ex.PW1/A, as contained in the claim petition. He also tendered in evidence copy of Award dated 24.4.2018 Ex.PW1/B passed by this Court whereby Shri Rajesh Kumar was ordered to be re-engaged by the respondents i.e. The Dean, College of Horticulture and Forestry Neri and The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan. In cross-examination, petitioner denied not having completed 240 days in any year as also his engagement for seasonal work. He denied engagement as per the standing instructions. He also denied working with M/s Shimla Clean Ways (Contractor). He admitted that he was engaged for 89 days. He denied that he voluntarily left the work on completion of 89 days.

8. On the other hand, respondents examined Shri Bhupinder Singh Thakur, Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station, Bajaura, District Kullu as RW1, who deposed the defence of respondents vide his affidavit Ex.RW1/A, as contained in the reply. He also tendered in evidence copy of standing instructions dated 5.12.2001 from the Registrar Ex.RW1/B regarding engagement of labour on contractual basis, copy of letter dated 14.6.2002 Ex.RW1/C, copy of notification dated 30.4.2013 Ex.RW1/D regarding outsourcing of unskilled labour services, copy of notification dated 13.8.2014 Ex.RW1/E regarding extension of contract in favour of M/s Shimla Clean Ways, copy of notification dated 31.3.2015 Ex.RW1/F regarding outsourcing unskilled labour services to M/s. Rainbow Enterprises, copy of licence of contractor dated 18.9.2015 Ex.RW1/G, copy of advertisement dated 15.3.2011 Ex.PW1/H, copies of letters dated 16.4.2011, 19.11.2013, 25.11.2013 Ex.RW1/I to Ex.RW1/K, copy of month wise attendance of petitioner Ex.RW1/L, copies of office memorandums/tentative seniority lists Ex.RW1/M to RW1/Z2 as stood during period 31.12.1999 to 31.12.2014 and copy of list of old records to be destroyed Ex.RW1/Z3. In cross-examination, he admitted that petitioner was engaged in year 1997 and at the time of engagement of petitioner on work no appointment letter was issued nor terms and conditions settled. He further deposed that they have not issued any notice to the petitioner for alleged abandonment of work. He denied petitioner having worked till 24.11.2013 but self stated he worked on muster roll basis till 2001 and thereafter he worked on contractual basis. He claimed ignorance if notice under Section 9A (a) of the Act was given for changing the work of petitioner from muster rolls to contract basis. He was not sure if petitioner has worked on contract basis from 1.1.2002 till 24.11.2013. He admitted that workers mentioned at serial Nos. 221 to 299 in seniority list Ex.RW1/N are junior to the petitioner and have worked regularly in the University. He claimed ignorance if workers at serial nos.168 to 170 in seniority list Ex.RW1/U and workers at serial no.29 to 33 in tentative seniority list Ex.RW1/X are on the rolls of University. He further deposed that the workers mentioned at serial Nos. 20 & 21 in seniority list Ex.RW1/Z2 might have been appointed in year 2013.

9. I have heard learned counsel for the parties at length and carefully considered the material on record.

10. Learned counsel for petitioner argued that petitioner has served the respondents as daily wager throughout his engagement in year 1996 to 2013 but respondents under garb of

standing instructions Ex.RW1/B which as per respondents were implemented from 1.1.2002 and remained in vogue up April, 2013, as also under the outsourcing policy, have given fictional breaks as well finally terminated his service on 25.11.2013. He submitted that the standings instructions have already been held illegal by this Court vide Award Ex.PW1/B. Further on assailing Award Ex.PW1/B alongwith similar matters pertaining to the respondents, Hon'ble High Court vide judgement dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has held that the initial engagement of workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent workman did not complete 240 days in a calendar year. Judgement dated 13.11.2018 of Hon'ble High Court has attained finality as the Special Leave Petition preferred by respondent University stands dismissed by Hon'ble Supreme Court vide judgement dated 25.11.2019 passed in Special Leave Petition (CIVIL) Diary No(s) 37890/2019. Learned counsel also submitted that the short term contractual engagement of petitioner under the scheme/project "Refinement of production and propagation techniques for temperate bulbous crops Iilum (HMM-052-53) from 22.4.2011 to 25.11.2013 cannot be said to curtail the continuous service of petitioner because petitioner from 1.1.1996 had been working as daily paid labourer with the respondents and his termination of services vide letter Ex.RW1/K is illegal in violation of the mandatory provisions of the Act. It is further submitted that the respondents have arbitrarily changed service condition of petitioner from working on muster rolls to contract basis without serving any notice under Section 9A of the Act. Therefore, petitioner having completed 240 days in each calendar year is entitled to reinstatement with deemed continuity in service, seniority, back wages with consequential service benefits.

11. On the other hand, learned counsel for respondents has argued that petitioner was engaged on contractual basis to do manual work on seasonal basis for specific spells of 89 days and in 2001 petitioner left the job at his own will. He further submitted that as petitioner did not work for 240 days in any calendar year, therefore, he is not entitled for any of the reliefs claimed.

12. For the reasons to be recorded hereinafter, findings of this Court on above issues are as under:—

Issue No.1	:	Yes.
Issue No.2	:	As per discussion.
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Relief	:	Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 5

13. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

14. The claim of petitioner is that he was appointed on daily wage basis as skilled helper *w.e.f.* 1.1.1996 for 89 days on muster roll and after completion of 89 days his services were unlawfully terminated by respondent No. 2 as he was given fictional breaks. Thereafter, he was re-engaged in the same capacity for 89 days. This practice of engagement and disengagement

continued upto 24.11.2013 whereafter he was finally terminated on 25.11.2013. Respondents have denied engagement of petitioner from 1996 to 2013, however, they have asserted in the reply that petitioner worked in different spells from 1997 to year 2001 and left the job at his own will. They have denied giving fictional breaks to not let petitioner complete 240 days for the purpose of continuous service. Respondents' further case is that as per standing instructions Ex.RW1/B, the labourer was engaged on contractual basis to do manual work on seasonal basis for specific spell of 89 days whereafter his services were automatically terminated. Respondents have pleaded that the workman could work atleast two spells after break of 15 days in each spell whole of the year and no seniority was maintained as well these instructions were in vogue upto April, 2013.

15. Against aforesaid factual matrix, on analysis of evidence, it is observed that the month wise attendance of petitioner Ex.RW1/L, not disputed by either of the parties, mentions engagement of petitioner on muster roll basis at Bajaura on 21.1.1997. As per Ex.RW1/L petitioner has worked for 96 days in 1997, 95 days in 1998, 137 days in 1999, 120 days in 2000 and 179 days in 2001, whereafter, against year 2002, it is mentioned that policy regarding engagement of labour for 89 days on contractual basis was accepted by the University applicable *w.e.f.* 1.1.2002. RW1 though has denied that petitioner has worked till year 2013 but self stated that petitioner has worked on muster roll basis till 2001 and thereafter he had worked on contractual basis. Thus, the initial engagement is evident as 21.1.1997 per Ex.RW1/L on muster rolls and petitioner worked as such till 2001, whereafter petitioner has further interruptedly worked till 2013 as deposed by petitioner.

16. The pivotal question is whether fictional breaks in service were given to petitioner by the respondents. The plea of respondents that petitioner left the work in 2001 cannot be accepted as petitioner has denied the same as also RW1 has admitted having not issued any notice to the petitioner for alleged abandonment of work. The plea of abandonment is required to be proved like any other plea but the same has not been done by the respondents. Respondents have also not established that respondent University/Research Station is a seasonal industry.

17. Another vital aspect of the matter is categoric admission of RW1 that workers mentioned at serial no. 221 to 299 in seniority list Ex.RW1/N are junior to the petitioner and have worked regularly in the university which proves that the aforementioned workers have all completed more than 240 days and were engaged/employed later than the petitioner. This proves two aspects, one that sufficient work was available as the juniors had regularly worked who completed more than 240 days. Secondly, the engagement of junior workers and disengaging petitioner from time to time between years 1997 to 2013 and not letting him complete 240 days in a calendar year for the purpose of continuous service is discriminatory and unfair labour practice on part of the respondents in terms of Section 2(ra) specified in Clause 10 of the Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

> "2(10) To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen".

18. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent university being the instrumentality of State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a daily wager. He cannot be deprived benevolent provisions of the Act as disengaging him from time to time is nothing but refusal by the respondents to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. The plea of abandonment, seasonal work and engagement of petitioner on contractual basis is camouflage. The aforementioned admission of RW1 also proves violation of Sections 25-G and 25-H of the Act as well violation of Articles 14 and 16 of the Constitution being discriminatory and arbitrary as the petitioner for no apparent cause has been discriminated viz-a-viz his juniors aforementioned.

19. Our Hon'ble High Court in recent judgment ***Keshav Ram*** *vs.* ***State of H.P. & Others 2020 LawSuit (HP) 215*** has held the following:

"Beli Ram *vs.* State of H.P. and others decided on 02.06.2009, in which this Court has held as under:-—

"The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram *vs.* State of H.P. & Others, decided on 15.06.2009, this Court has held as under:—

"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

20. It is also significant to note observations of Hon'ble High Court of Himachal Pradesh in ***Manoj Kumar Sharma vs. HRTC & Anr. 2007 LLR 1155*** wherein it is held as under:—

> "…….(17) Hon'ble Supreme Court has held in Haryana State Electronic Department Corporation Limited v. Mamni, (2006) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and half years, in such circumstances, the Hon'ble Supreme Court has held the termination not bona fide but adopted to defeat the object of the Act. Thus, it is not covered by section 2 (oo) (bb) of the Industrial Disputes Act, 1947.
>
> (18) In the present case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. This practice has been adopted by the management of respondent corporation to defeat the provisions of Section 25(F) of the Industrial Disputes Act, 1947. The letter dated 29-3-2001 issued by the Managing Director to all the Divisional Manager of the corporation-respondent amounts to unfair labour practice……"

21. Now coming to issue no.5 whether petitioner was engaged as labourer on contractual basis to do manual work on seasonal basis as alleged, it is observed that per month wise attendance Ex.RW1/L petitioner was engaged on muster roll basis initially and he worked from 21.1.1997 till November, 2001 and thereafter as per the respondents he worked on contractual basis in terms of standing instructions Ex.RW1/B. Further, per respondents, petitioner pursuant to advertisement dated 15.3.2011 Ex.RW1/H worked as skilled helper on contractual engagement to the purely and temporary post of skilled helper on fixed salary of Rs.6,000/- per month. From perusal of advertisement Ex.RW1/H, it transpires that there is term and condition no.6 to the following effect:—

> "the existing DPLs working in this University can also apply for the above said posts. Their seniority will be intact in case of their appointments for the aforesaid posts and they will be deployed as DPLs after termination of the project".

22. There is no doubt letter dated 16.4.2011 Ex.RW1/I engaging petitioner Chet Ram on contract basis co-terminus to the post of skilled helper under the scheme/project entitled "Refinement of production and propagation techniques for temperate bulbous crops Iilum (HMM-052-53) and there is agreement dated 22.4.2011 allegedly executed between Registrar, University and Chet Ram as also pursuant to letter Ex.RW1/J respondent No.2 issued termination letter Ex.RW1/K to petitioner Chet Ram. However, respondent no.2 has not averred or shown to comply with aforementioned condition no.6 of the advertisement ibid. Petitioner was not deployed as daily paid labourer after termination of the project. This contractual appointment on fixed salary from 22.4.2011 to 23.11.2013 as well working under alleged standing instructions Ex.RW1/B on contractual basis for 89 days spells is altogether a camouflage, not to let petitioner complete 240 days and deprive the benefit of continuous service.

23. This Court finds merit in the submissions of learned counsel for petitioner that the standing instructions Ex.RW1/B are of no legal consequence as in Award Ex.PW1/B passed by this Court, the defence based on said standing instructions has already met with failure. Hon'ble High Court of Himachal Pradesh vide its decision dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has already dealt with this controversy and observed as under:—

> "……10. It is a matter of record that the respondent workman served the petitioners as an unskilled labourer from the year 2006 to 09.09.2014 when his services were terminated

without any notice or retrenchment compensation. Record also demonstrates that initially the engagement of the workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent-workman did not complete 240 days in a calendar year. It is also evident from the record that respondent was initially engaged on 17.07.2006 and he continued to work with the petitioners till 20.07.2012, whereafter he was engaged from 15.07.2013 to 30.09.2014 for different number of working days through outsourcing agency of manpower, as per the Outsource Policy introduced *w.e.f.* April 2013. However, there is no documentary evidence suggesting that at any stage the services of the respondent-workman were placed at the disposal of M/S Shimla Cleanways by the petitioners.

11. It is apparent from the record that there is violation of Section 25-G of the Industrial Disputes Act, 1947 as workmen, namely, Asha Devi and Tara Chand, who were engaged on 13.07.2009 were permitted to complete more than 240 days in the years 2010, 2011, 2012 and also 2013, whereas on account of intermittent breaks given to the respondent-workman, he was not permitted to complete 240 days in a calendar year. Therefore, the termination of services of the respondent-workman in the year 2014 without complying with the provisions of Section 25-F amounts to violation of the provisions of the Industrial Disputes Act, 1947. It has also been rightly held by learned Labour Court that but for the fictional breaks granted to the respondent-workman, he would have completed "continuous service" in a year as envisaged under Section 25-B of the Industrial Disputes Act, 1947. This also proves that the petitioners gave deliberate breaks to the respondent-workman so that he could not complete 240 days in a calendar year. The factum of disengaging the respondent-workman periodically and retaining juniors also stands borne out from the record. In this view of the matter, we do not find any infirmity with the findings returned by the learned Labour Court directing reengagement of the services of the respondent-workman forthwith alongwith seniority and continuity in service……"

24. The judgement dated 13.11.2018 of Hon'ble High Court of Himachal Pradesh supra has attained finality as the Special Leave Petition (CIVIL) Diary No(s).37890/2019 titled The Dean College of Horticulture and Forestry Neri & Anr. *vs.* Joginder Singh arising out of final judgement dated 13.11.2018 aforementioned stands dismissed by Hon'ble Supreme Court.

25. Peculiar aspect of the matter is how service condition of the petitioner has been changed without issuance of any notice in terms of Section 9A of the Act has not been explained by the respondents. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670*** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

"[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules,

Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent- Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item l in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the l.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

26. Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India*** supra has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

27. Thus, the arbitrary change in service condition of petitioner from working on muster rolls to contractual working is illegal in terms of Section 9A of the Act and cannot be countenanced. Consequently, it is held that there has been time to time termination of services of the petitioner by the respondents from initial engagement on 21.1.1997 to 24.11.2013 which are fictional/artificial as well there was final termination on 25.11.2013. The same are illegal and unjustified. Issue no.1 is accordingly decided in affirmative and issue no.5 in the negative.

ISSUE No. 2

28. As the fictional breaks given to the petitioner from 21.1.1997 to 24.11.2013 as well final termination on 25.11.2013 are declared unjustified and illegal, petitioner is held entitled to be deemed in continuous service from his initial date of engagement *i.e.* 21.1.1997 and is liable to be reinstated forthwith. Petitioner is also entitled to consequential benefits of seniority from 21.1.1997 except back wages as petitioner has not deposed/averred as to how he has been able to maintain himself in absence of being gainfully employed/working. Petitioner in his affidavit Ex.PW1/A mentioned him 41 years of age and it cannot be presumed that person of such age would remain without work for long since 25.11.2013. Issue no.2 is decided in above terms.

ISSUE No. 3

29. In view of positive findings on issues no.1 and 2, the claim petition is held maintainable. Even otherwise, respondents have not proved or established the petition to be not maintainable. Accordingly, issued no.3 is answered in negative against the respondents.

ISSUE No. 4

30. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, ***(1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:

"*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

31. There is no unreasonable delay by petitioner in raising the industrial dispute. Further, the reference by appropriate Government made in February, 2016 does not raise this issue as also makes reference to letter dated 9.12.2014 of Labour-*cum*-Conciliation Officer, Kullu. Thus, the claim petition is not time barred. Accordingly, issue no.4 is answered in negative against respondents.

ISSUE No. 6

32. Respondents have averred in the preliminary objections that the Director of Research of University, is the principal employer under the policy of outsourcing who has not been arrayed as a necessary party. Policy of outsourcing is stated to be introduced by the university *w.e.f.* 1st May, 2013 vide notification dated 30.4.2013. However, the petitioner was engaged in 1997 and was finally terminated on 25.11.2013, therefore said policy of outsourcing is not material in this case. Furthermore, the Associate Director respondent No.2 is the relevant and necessary party in terms of reference, who stands arrayed in the claim petition as well. Consequently, this issue is answered in negative against the respondents.

RELIEF

33. As a sequel to the findings of this Court on the aforementioned issues, the claim petition is allowed in part. It is held that time to time artificial breaks in service given to petitioner by respondents from 21.1.1997 to 24.11.2013 as well final termination *w.e.f.* 25.11.2013 are illegal and unjustified. Respondents are directed to re-engage the petitioner forthwith, who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement i.e. 21.1.1997. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged labourer, **except back wages**. His seniority shall be reckoned from the date of initial engagement *i.e.* 21.1.1997. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2022.

Sd/-
(ARVIND MALHOTRA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)

Ref. No.	:	331/2016
Date of Institution	:	26-5-2016

Date of Decision : 25-02-2022

Shri Ludar Mani s/o Shri Durgu Ram, r/o Village Gahi, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. . .*Petitioner*.

Versus

1. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P.

2. The Associate Director, (R&E), Dr. Y. S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, HP. . .*Respondents*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vijay Kaundal, Ld. Advocate
Sh. Rajat Chaudhary, Ld. Advocate

For the Respondents : Sh. Munish Kumar, Ld. Advocate

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

> "Whether time to time termination of the services of Shri Ludar Mani s/o Shri Durgu Ram, r/o Village Gahi, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. during year, 2007 to 26-12-2014 (as alleged by workman) by (i) the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. (ii) the Associate Director (R&E) Dr. Y. S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In nutshell, the facts pleaded by petitioner in statement of claim are as follows. Petitioner was appointed as skilled helper with prior permission of respondent No. 1 on daily waged basis by respondent No. 2 in year 2007 for 89 days and after completion of 89 days his services were unlawfully verbally terminated by respondent No. 2 as fictional breaks were given for some days. Thereafter, petitioner's services were again engaged in same capacity for 89 days, which practice of engagement and disengagement continued upto 26.12.2014. From 2007 to 26.12.2014, the respondents have not provided casual card or appointment letter to petitioner and the services of petitioner were terminated by respondents w.e.f. 26.12.2014 without complying with the mandatory provisions of the Act. Before time to time termination of services and final termination on 26.12.2014 respondent has not given any notice or compensation under Section 25-F of the Act and without complying with the same his termination is null, void ab-initio. During service period of petitioner from 2007 to 26.12.2014 work and conduct of petitioner was fully satisfactory up to mark. Respondents neither issued any show cause notice, charge-sheet nor any inquiry was conducted against petitioner and respondents violated principle of natural justice.

3. Petitioner has further claimed that principle of 'last come first go' was violated by respondents as new persons were engaged in place of petitioner and junior workmen namely

Dhimeshwar (2002), Uttam Chand (2003), Kanta Devi (2004) Bal Krishan (2005), Budhi Devi (2006) and Shiv Chand (2009) were retained by the respondents, which is violation of Sections 25-G and 25-H of the Act. In the month of November, 2013 respondents gave the work to contractor namely M/s. Cleanways Company Shimla and respondent no.2 told petitioner to work as helper on the roll of abovementioned contractor which the petitioner refused and due to this reason his services were finally terminated by the respondents. The act of giving fictional breaks by respondents is unfair labour practice as per 5th Schedule Clause 10 of the Act. Petitioner has further claimed to be not gainfully employed anywhere from 26.12.2014. Petitioner prayed for setting aside time to time termination from 2007 to 26.12.2014 and final termination *w.e.f.* 26.12.2014 with reinstatement, full back wages, continuity of service, seniority with consequential service benefits. He also prayed for considering the case of petitioner for regularization and litigation costs of Rs.15,000/-.

4. Respondents contested the claim by filing common reply raising preliminary objections qua maintainability, petition barred by limitation. It is averred in the preliminary objections that as per standing instructions implemented by university *w.e.f.* 1.1.2002 labourer was engaged on contractual basis to do manual work on seasonal basis by needy departments/research stations at fixed wages for specific spell of 89 days, whereafter his services were automatically terminated in accordance with terms and conditions of engagement, non joinder of necessary party *i.e.* Director of Research of the university as principal employer under the policy of outsourcing. On merits, respondents submitted that petitioner was engaged as labourer at Regional Horticulture Research and Training Station, Bajaura on 1.12.2007 on contractual basis at fixed wages for specific spell of 89 days to do manual work on seasonal basis, whereafter his services were automatically terminated in accordance with terms and conditions of engagement. All engagements of labourers were made at fixed salary for a fixed period for 89 days in one spell and two spells in whole of the year after a break for atleast 15 days in each spell for seasonal jobs subject to availability of funds in accordance with standing instructions effective from 1.1.2002. Respondents claimed that petitioner worked in different spells from year 2007 to year 2011 in accordance with standing instructions and left the job at his own will after 15.5.2011. Respondents denied that persons junior to petitioner have been engaged by respondents after disengagement of the services of petitioner from time to time. The Director of Research of respondent university floated tenders for outsourcing unskilled labourer w.e.f. May, 2013 and contract for outsourcing was awarded to M/s. Shimla Cleanways. The contract for outsourcing services of labourers *w.e.f.* April, 2015 to 31.3.2018 was further awarded to M/s. Rainbow Enterprises. Respondents denied giving fictional breaks to not let petitioner complete 240 days as also violation of the provisions of Sections 25-G of the Act. Respondents also denied unfair labour practice and termination on 26.12.2014. Respondents denied the claim of petitioner and prayed for dismissal of the claim petition.

5. Rejoinder was filed by the petitioner reiterating contents of petition and denying those of reply filed by respondents.

6. On the pleadings of parties, following issues were framed on 19.3.2019:—

1. Whether time to time termination of services of the petitioner by the respondents during year, 2007 to 26-12-2014 is/was illegal and unjustified, as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in present form, as alleged? . .*OPR*.

4. Whether the claim petition is time barred, as alleged? . .*OPR*.

5. Whether the petitioner was engaged as a labourer on contractual basis to do manual work on seasonal basis, as alleged? . .*OPR.*

6. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? . .*OPR.*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner Sh. Ludar Mani appeared as PW1 and deposed his claim through sworn affidavit Ex.PW1/A, as contained in the claim petition. He also tendered in evidence copy of Award dated 24.4.2018 Ex.PW1/B passed by this Court whereby Shri Rajesh Kumar was ordered to be re-engaged by the respondents i.e. The Dean, College of Horticulture and Forestry Neri and The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan. In cross-examination, petitioner denied not having completed 240 days in any year as also his engagement for seasonal work. He denied engagement as per the standing instructions. He also denied working with M/s Shimla Clean Ways (Contractor). He admitted that he was engaged for 89 days. He denied that he voluntarily left the work on completion of 89 days.

8. On the other hand, respondents examined Shri Bhupinder Singh Thakur, Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station, Bajaura, District Kullu as RW1, who deposed the defence of respondents vide his affidavit Ex.RW1/A, as contained in the reply. He also tendered in evidence copy of standing instructions dated 5.12.2001 from the Registrar Ex.RW1/B regarding engagement of labour on contractual basis, copy of letter dated 14.6.2002 Ex.RW1/C, copy of notification dated 30.4.2013 Ex.RW1/D regarding outsourcing of unskilled labour services, copy of notification dated 13.8.2014 Ex.RW1/E regarding extension of contract in favour of M/s Shimla Cleanways, copy of notification dated 31.3.2015 Ex.RW1/F regarding outsourcing unskilled labour services to M/s. Rainbow Enterprises, copy of licence of contractor dated 18.9.2015 Ex.RW1/G, copy of month wise attendance of petitioner Ex.RW1/H and copies of office memorandums/tentative seniority lists Ex.RW1/I to RW1/Q as stood during period 31.7.2007 to 31.12.2014. In cross-examination, he admitted that petitioner was engaged in year 2007 and at the time of engagement of petitioner on work no appointment letter was issued nor terms and conditions settled. He further deposed that they have not issued any notice to the petitioner for alleged abandonment of work. He admitted petitioner having worked till 26.12.2014 but self stated he worked on contractual basis. He claimed ignorance if notice under Section 9A (a) of the Act was given for changing the work of petitioner from muster rolls to contract basis. He was not sure if petitioner has worked on contract basis from year 2007 till 26.12.2014. He admitted that workers mentioned at serial nos. 32 to 38 in seniority list Ex.RW1/N are junior to the petitioner and have worked regularly in the University. He claimed ignorance if workers at serial Nos.168 to 170 in seniority list Ex.RW1/J and workers at serial No.29 to 33 in tentative seniority list Ex.RW1/M are on the rolls of University. He further deposed that the workers mentioned at serial Nos. 20 & 21 in seniority list Ex.RW1/Q might have been appointed in year 2013.

9. I have heard learned counsel for the parties at length and carefully considered the material on record.

10. Learned counsel for petitioner argued that petitioner has served the respondents as daily wager throughout his engagement in year 2007 to 2014 but respondents under garb of standing instructions Ex.RW1/B which as per respondents were implemented from 1.1.2002 and remained in vogue up April, 2013, as also under the outsourcing policy, have given fictional breaks as well finally terminated his service on 26.12.2014. He submitted that the standings instructions

have already been held illegal by this Court vide Award Ex.PW1/B. Further on assailing Award Ex.PW1/B alongwith similar matters pertaining to the respondents, Hon'ble High Court *vide* judgement dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has held that the initial engagement of workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent workman did not complete 240 days in a calendar year. Judgement dated 13.11.2018 of Hon'ble High Court has attained finality as the Special Leave Petition preferred by respondent University stands dismissed by Hon'ble Supreme Court vide judgement dated 25.11.2019 passed in Special Leave Petition (CIVIL) Diary No(s) 37890/2019.

11. On the other hand, learned counsel for respondents has argued that petitioner was engaged on contractual basis to do manual work on seasonal basis for specific spells of 89 days and petitioner left the job at his own will. He further submitted that as petitioner did not work for 240 days in any calendar year, therefore, he is not entitled for any of the reliefs claimed.

12. For the reasons to be recorded hereinafter, findings of this Court on above issues are as under:—

Issue No.1	:	Yes
Issue No.2	:	As per discussion
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Relief	:	Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 5

13. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

14. Petitioner has claimed that respondents gave him fictional breaks from year 2007 till 26.12.2014 and finally terminated his services on 26.12.2014. However, the reference by the appropriate Government to this Court does not raise issue of final termination but the alleged time to time termination of services during year 2007 to 26.12.2014 by the respondents, as to whether it was without complying with the provisions of the Act. Thus the question of final termination is beyond scope of reference in terms of Section 10(4) of the Act and as such not to be entertained.

15. The claim of petitioner is that he was appointed by respondent no.2 on daily wage basis as skilled helper w.e.f. 2007 for 89 days on muster roll but after completion of 89 days his services were unlawfully terminated, whereafter, he was re-engaged in the same capacity for 89 days and such practice of engagement and disengagement continued upto 26.12.2014. Petitioner has further claimed that fictional breaks were given during this period of engagement and disengagement, however, he has completed 240 days in each year from 2007 to 26.12.2014.

16. Per contra, the respondents have claimed that petitioner was engaged as labourer on 1.12.2007 on contractual basis for specific spell of 89 days to do manual work on seasonal basis, whereafter his services automatically terminated in accordance with standing instructions

Ex.RW1/B effective from 1.1.2002. They have denied fictional breaks to not let petitioner complete 240 days for the purpose of continuous service. Respondents further specifically pleaded that petitioner had worked in different spells from 2007 to year 2011 in accordance with standing instructions and left the job at his own after 15.5.2011.

17. It is apposite to take not of standing instructions Ex.RW1/B before evaluating the defence of respondents. Letter dated 5.12.2001 Ex.RW1/B specifically mentions that as per policy decision taken by University, heretofore, no new casual workers shall be employed on M/rolls by any functionary of the University w.e.f. 1.1.2002 except casual workers whose names are appearing in the seniority list. Clause IV (D) (e) of standing instructions provides as under:—

> "The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement a break of at least 15 days is necessary in each case.

18. Further, vide letter dated 14.6.2002 Ex.RW1/C issued by Registrar regarding engagement of contractual labour, the duration for engagement of contractual labour, in the University is provided as under:-

> "Two spells of 89 days each in whole of the calendar year with break of at least 15 days in each spell and in each case".

19. The month-wise attendance of Shri Ludar Mani petitioner Ex.RW1/H reveals that he was engaged in year 2003 between 1.12.2007 to 31.12.2007 and he worked for 30 days in 2007. Thereafter, in two spells in 2008 he worked for 81 & 84 days totaling 165. Similarly in two spells 84 days and 88 totaling 172 days in 2009 and so on 171 days in 2010, 73 days in 2011. The aforementioned month-wise attendance Ex.RW1/H does prove that petitioner Ludar Mani was engaged and disengaged time to time between 2007 to 2011 not allowing him to work regularly and beyond 89 days in either of the spells. RW1 admitted that petitioner has worked till 26.12.2014. The plea of respondents that petitioner left the job at his own will after 15.5.2011 cannot be accepted as petitioner has denied the same as also RW1 has admitted having not issued any notice to petitioner for alleged abandonment of work. The plea of abandonment is required to be proved like any other plea but the same has not been done by the respondents. Respondents have also not established that respondent University/Research Station is a seasonal industry.

20. As observed above, petitioner has been engaged and disengaged not allowing him to complete more than 89 days in any spell and completing 240 days in a calendar year. This proves that fictional breaks were given to petitioner. Plea of respondents that essential manual seasonal work was subject to availability of funds, cannot be believed as the same work was allegedly allotted to the contractor. The disengagement of petitioner from time to time between 2007 to 26.12.2014 and not letting him complete 240 days in a calendar year for the purpose of continuous service is discriminatory and unfair labour practice on part of the respondents in terms of Section 2(ra) specified in Clause 10 of the Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

> "2(10) To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen".

21. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent university being the instrumentality of State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a daily

wager. He cannot be deprived benevolent provisions of the Act as disengaging him from time to time is nothing but refusal by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. The plea of abandonment, seasonal work and engagement of petitioner on contractual basis is camouflage.

22. Our Hon'ble High Court in recent judgement ***Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215*** has held the following:

"Beli Ram vs. State of H.P. and others decided on 02.06.2009, in which this Court has held as under:-—

"The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15.06.2009, this Court has held as under:—

"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days

every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

23. It is also significant to note observations of Hon'ble High Court of Himachal Pradesh in ***Manoj Kumar Sharma vs. HRTC & Anr. 2007 LLR 1155*** wherein it is held as under:—

"…….(17) Hon'ble Supreme Court has held in Haryana State Electronic Department Corporation Limited v. Mamni, (2006) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and half years, in such circumstances, the Hon'ble Supreme Court has held the termination not bona fide but adopted to defeat the object of the Act. Thus, it is not covered by section 2 (oo) (bb) of the Industrial Disputes Act, 1947.

(18) In the present case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. This practice has been adopted by the management of respondent corporation to defeat the provisions of Section 25(F) of the Industrial Disputes Act, 1947. The letter dated 29-3-2001 issued by the Managing Director to all the Divisional Manager of the corporation-respondent amounts to unfair labour practice……"

24. Now coming to issue no.5 whether petitioner was engaged as labourer on contractual basis to do manual work on seasonal basis as alleged, it is observed that the answer certainly is in the negative for the reason that there is no contract alleged or brought on record by the respondents proving appointment of petitioner on contractual basis. The defence of respondents that in terms of standing instructions Ex.RW1/B respondents engaged petitioner on contractual basis for 89 days is altogether a camouflage not to let petitioner complete 240 days and deprive the benefit of continuous service.

25. This Court findings merit in the submissions of learned counsel for petitioner that the standing instructions Ex.RW1/B are of no legal consequence as in Award Ex.PW1/B passed by this Court, the defence based on said standing instructions has already met with failure. Hon'ble High Court of Himachal Pradesh vide its decision dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has already dealt with this controversy and observed as under:—

"……10. It is a matter of record that the respondent workman served the petitioners as an unskilled labourer from the year 2006 to 09.09.2014 when his services were terminated without any notice or retrenchment compensation. Record also demonstrates that initially the engagement of the workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent-workman did not complete 240 days in a calendar year. It is also evident from the record that respondent was initially engaged on 17.07.2006 and he continued to work with the petitioners till 20.07.2012, whereafter he was engaged from 15.07.2013 to 30.09.2014 for different number of working days through outsourcing agency of manpower, as per the Outsource Policy introduced w.e.f. April 2013. However, there is no documentary evidence suggesting that at any stage the services of the respondent-workman were placed at the disposal of M/S Shimla Cleanways by the petitioners.

11. It is apparent from the record that there is violation of Section 25-G of the Industrial Disputes Act, 1947 as workmen, namely, Asha Devi and Tara Chand, who were engaged on

13.07.2009 were permitted to complete more than 240 days in the years 2010, 2011, 2012 and also 2013, whereas on account of intermittent breaks given to the respondent-workman, he was not permitted to complete 240 days in a calendar year. Therefore, the termination of services of the respondent-workman in the year 2014 without complying with the provisions of Section 25-F amounts to violation of the provisions of the Industrial Disputes Act, 1947. It has also been rightly held by learned Labour Court that but for the fictional breaks granted to the respondent-workman, he would have completed "continuous service" in a year as envisaged under Section 25-B of the Industrial Disputes Act, 1947. This also proves that the petitioners gave deliberate breaks to the respondent-workman so that he could not complete 240 days in a calendar year. The factum of disengaging the respondent-workman periodically and retaining juniors also stands borne out from the record. In this view of the matter, we do not find any infirmity with the findings returned by the learned Labour Court directing reengagement of the services of the respondent-workman forthwith alongwith seniority and continuity in service……"

26. The judgment dated 13.11.2018 of Hon'ble High Court of Himachal Pradesh supra has attained finality as the Special Leave Petition (CIVIL) Diary No(s).37890/2019 titled The Dean College of Horticulture and Forestry Neri & Anr. vs. Joginder Singh arising out of final judgement dated 13.11.2018 aforementioned stands dismissed by the Hon'ble Supreme Court. Consequently, it is held that there has been time to time termination of services of the petitioner by the respondents from initial engagement in December, 2007 to 26.12.2014 which are fictional/artificial. The same are illegal and unjustified. Issue no.1 is accordingly decided in affirmative and issue no.5 in the negative.

ISSUE No. 2

27. As the fictional breaks given to the petitioner from December, 2007 to 26.12.2014 are declared unjustified and illegal, petitioner is held entitled to be deemed in continuous service from his initial date of engagement in December, 2007 and break period is liable to be condoned. Petitioner is also entitled to consequential benefits of seniority from his initial date of engagement in December, 2007 except back wages as petitioner has not deposed/averred as to how he has been able to maintain himself in absence of being gainfully employed/working. Petitioner in his affidavit Ex.PW1/A mentioned him 35 years of age and it cannot be presumed that person of such age would remain without work for long since February, 2011. Issue no.2 is decided in above terms.

ISSUE No. 3

28. In view of positive findings on issues no.1 and 2, the claim petition is held maintainable. Even otherwise, respondents have not proved or established the petition to be not maintainable. Accordingly, issued no.3 is answered in negative against the respondent.

ISSUE No. 4

29. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, ***(1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:

"*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

30. There is no unreasonable delay by petitioner in raising the industrial dispute. Further, the reference by appropriate Government made in May, 2106 does not raise this issue as also makes

reference to letter dated 12.5.2014 of Labour -cum-Conciliation Officer, Kullu. Thus, the claim petition is not time barred. Accordingly, issue no.4 is answered in negative against respondents.

ISSUE No. 6

31. Respondents have averred in the preliminary objections that the Director of Research of University, is the principal employer under the policy of outsourcing who has not been arrayed as a necessary party. Policy of outsourcing is stated to be introduced by the university w.e.f. 1st May, 2013 vide notification dated 30.4.2013. However, the petitioner was engaged in December, 2007, therefore said policy of outsourcing is not material in this case. Furthermore, the Associate Director respondent no.2 is the relevant and necessary party in terms of reference, who stands arrayed in the claim petition as well. Consequently, this issue is answered in negative against the respondents.

RELIEF

32. As a sequel to the findings of this Court on the aforementioned issues, the claim petition is allowed in part. It is held that time to time artificial breaks in service given to petitioner by respondents from December, 2007 to 26.12.2011 are illegal and unjustified, who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in December, 2007. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged labourer, **except back wages**. His seniority shall be reckoned from the date of initial engagement in December, 2007. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2022.

Sd/-
(ARVIND MALHOTRA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)

Ref. No.	:	332/2016
Date of Institution	:	26-5-2016
Date of Decision	:	25-02-2022

Shri Om Chand s/o Shri Biru Ram, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P.

2. The Associate Director, (R&E), Dr. Y. S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Kullu, HP. . .*Respondents*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vijay Kaundal, Ld. Advocate
Sh. Rajat Chaudhary, Ld. Advocate

For the Respondents : Sh. Munish Kumar, Ld. Advocate

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

> "Whether time to time termination of the services of Shri Om Chand s/o Shri Biru Ram, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. during year, 2001 to 26.12.2014 (as alleged by workman) by (i) the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. (ii) the Associate Director (R&E) Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station Bajaura, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. In nutshell, the facts pleaded by petitioner in statement of claim are as follows. Petitioner was appointed as skilled helper with prior permission of respondent no.1 on daily waged basis by respondent no.2 in year 2001 for 89 days on muster roll and after completion of 89 days his services were unlawfully verbally terminated by respondent no.2 as fictional breaks were given for some days. Thereafter, petitioner's services were re-engaged in same capacity for 89 days, which practice continued till 26.12.2014. From 2001 to 26.12.2014, the respondents have not provided casual card or appointment letter to petitioner and the services of petitioner were terminated by respondents on 27.12.2014 without complying with the mandatory provisions of the Act. Before time to time termination of services and final termination w.e.f. 27.12.2014 respondent has not given any notice or compensation under Section 25-F of the Act and without complying with the same his termination is null, void ab-initio. During service period of petitioner from 2001 to 26.12.2014 work and conduct of petitioner was fully satisfactory up to mark. Respondents neither issued any show cause notice, charge-sheet nor any inquiry was conducted against petitioner and respondent violated principle of natural justice.

3. Petitioner has further claimed that principle of 'last come first go' was violated by respondents as new persons were engaged in place of petitioner and junior workmen namely Dhimeshwar (2002), Uttam Chand (2003), Kanta Devi (2004) and others were retained, which is violation of Sections 25-G and 25-H of the Act. In the month of November, 2013 respondent gave the work to contractor namely M/s. Cleanways Company Shimla and respondent no.2 told petitioner to work as helper on the roll of abovementioned contractor which the petitioner refused and due to this reason his services were finally terminated by the respondents. The act of giving fictional breaks by respondents is unfair labour practice as per 5th Schedule Clause 10 of the Act.

Petitioner has further claimed to be not gainfully employed anywhere. Petitioner prayed for setting aside time to time termination w.e.f. year 2001 to 26.12.2014 and final termination w.e.f. 27.12.2014 with reinstatement, full back wages, continuity of service, seniority with consequential service benefits. He also prayed for considering the case of petitioner for regularization and litigation costs of Rs.15,000/-.

4. Respondents contested the claim by filing common reply raising preliminary objections qua maintainability, petition barred by limitation. It is averred in the preliminary objections that as per standing instructions implemented by university w.e.f. 1.1.2002 labourer was engaged on contractual basis to do manual work on seasonal basis by needy departments/research stations at fixed wages for specific spell of 89 days, whereafter his services were automatically terminated in accordance with terms and conditions of engagement, non joinder of necessary party i.e. Director of Research of the university as principal employer under the policy of outsourcing. On merits, respondents submitted that petitioner was engaged as daily paid labourer at Regional Horticulture Research and Training Station, Bajaura on 21.8.2001 to do manual seasonal work. All engagements of labourers were at a fixed salary on contractual basis for fixed period for 89 days in one spell and two spells in whole of the year after break for atleast 15 days in each spells for seasonal job subject to availability of funds in accordance with standing instructions effective 1.1.2002. 1 Respondents claimed that petitioner worked in different spells from year 2001 to 2010 in accordance with standing instructions and left the job at his own will after 14.6.2010 and he had not worked for 240 days in any calendar year. Respondents denied that persons junior to petitioner have been engaged by respondents after disengagement of the services of petitioner from time to time. The Director of Research of respondent university floated tenders for outsourcing unskilled labourer w.e.f. 1.5.2013 and contract for outsourcing was awarded to M/s. Shimla Cleanways. The contract for outsourcing services of labourers w.e.f. April, 2015 to 31.3.2018 was further awarded to M/s. Rainbow Enterprises. Respondents denied giving fictional breaks to not let petitioner complete 240 days as also violation of the provisions of Section 25-G of the Act. Respondents also denied unfair labour practice and final termination on 26.12.2014. Respondents denied the claim of petitioner and prayed for dismissal of the claim petition.

5. Rejoinder was filed by the petitioner reiterating contents of petition and denying those of reply filed by respondents.

6. On the pleadings of parties, following issues were framed on 19.3.2019:—

1. Whether time to time termination of services of the petitioner by the respondents during year, 2001 to 26.12.2014 is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in present form, as alleged? . .*OPR.*

4. Whether the claim petition is time barred, as alleged? . .*OPR.*

5. Whether the petitioner was engaged as a labourer on contractual basis to do manual work on seasonal basis, as alleged? . .*OPR.*

6. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? . .*OPR.*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner Sh. Om Chand appeared as PW1 and deposed his claim through sworn affidavit Ex.PW1/A, as contained in the claim petition. He also tendered in evidence copy of Award dated 24.4.2018 Ex.PW1/B passed by this Court whereby Shri Rajesh Kumar was ordered to be re-engaged by the respondents i.e. The Dean, College of Horticulture and Forestry Neri and The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan. In cross-examination, petitioner denied not having completed 240 days in any calendar year as also his engagement for seasonal work. He denied engagement as per the standing instructions. He also denied working with M/s Shimla Clean Ways (Contractor). He admitted that he was engaged for 89 days. He denied that he voluntarily left the work on completion of 89 days.

8. On the other hand, respondents examined Shri Bhupinder Singh Thakur, Associate Director (R&E), Dr. Y.S. Parmar University of Horticulture and Forestry, Regional Horticulture Research Station, Bajaura, District Kullu as RW1, who deposed the defence of respondents vide his affidavit Ex.RW1/A, as contained in the reply. He also tendered in evidence copy of standing instructions dated 5.12.2001 from the Registrar Ex.RW1/B regarding engagement of labour on contractual basis, copy of letter dated 14.6.2002 Ex.RW1/C, copy of notification dated 30.4.2013 Ex.RW1/D regarding outsourcing of unskilled labour services, copy of notification dated 13.8.2014 Ex.RW1/E regarding extension of contract in favour of M/s Shimla Clean Ways, copy of notification dated 31.3.2015 Ex.RW1/F regarding outsourcing unskilled labour services to M/s. Rainbow Enterprises, copy of licence of contractor dated 18.9.2015 Ex.RW1/G, copies of office memorandums/tentative seniority lists Ex.RW1/H to RW1/U as stood during period 31.12.2001 to 31.12.2014 and copy of month wise attendance of petitioner Ex.RW1/V. In cross-examination, he admitted that petitioner was engaged in year 2001 and at the time of engagement of petitioner on work no appointment letter was issued nor terms and conditions settled. He further deposed that they have not issued any notice to the petitioner for alleged abandonment of work. He denied petitioner having worked till 26.12.2014 but self stated he worked on muster roll basis till 2001 and thereafter he worked on contractual basis. He claimed ignorance if notice under Section 9A (a) of the Act was given for changing the work of petitioner from muster rolls to contract basis. He was not sure if petitioner has worked on contract basis from 1.1.2002 till 26.12.2014. He admitted that worker mentioned at serial no. 247 in seniority list Ex.RW1/M is junior to the petitioner and has worked regularly in the University. He claimed ignorance if workers at serial nos.168 to 170 in seniority list Ex.RW1/N and workers at serial no.29 to 33 in tentative seniority list Ex.RW1/Q are on the rolls of University. He further deposed that the workers mentioned at serial nos. 20 & 21 in seniority list Ex.RW1/U might have been appointed in year 2013.

9. I have heard learned counsel for the parties at length and carefully considered the material on record.

10. Learned counsel for petitioner argued that petitioner has served the respondents as daily wager throughout his engagement in year 2001 to 26.12.2014 but respondents under garb of standing instructions Ex.RW1/B which as per respondents were implemented from 1.1.2002 and remained in vogue up April, 2013, as also under the outsourcing policy, have given fictional breaks. He submitted that the standings instructions have already been held illegal by this Court vide Award Ex.PW1/B. Further on assailing Award Ex.PW1/B alongwith similar matters pertaining to the respondents, Hon'ble High Court vide judgment dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has held that the initial engagement of workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent workman did not complete 240 days in a calendar year. Judgment dated 13.11.2018 of Hon'ble High Court has attained finality as the Special Leave Petition preferred by respondent University stands dismissed by Hon'ble Supreme Court vide judgment dated 25.11.2019 passed in Special Leave Petition (CIVIL) Diary No(s) 37890/2019.

11. On the other hand, learned counsel for respondents has argued that petitioner was engaged on contractual basis to do manual work on seasonal basis for specific spells of 89 days and after 14.6.2010 petitioner left the job at his own will. He further submitted that as petitioner did not work for 240 days in any calendar year, therefore, he is not entitled for any of the reliefs claimed.

12. For the reasons to be recorded hereinafter, findings of this Court on above issues are as under:—

Issue No.1	:	Yes.
Issue No.2	:	As per discussion.
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Relief	:	Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 5

13. Both these issues taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

14. Petitioner has claimed that respondents gave him fictional breaks from year 2001 till 26.12.2014 and finally terminated his service on 27.12.2014. However, the reference by the appropriate Government to this Court does not raise issue of final termination but the alleged time to time termination of services during year 2001 to 26.12.2014 by the respondents, as to whether it was without complying with the provisions of the Act. Thus the question of final termination is beyond scope of reference in terms of Section 10 (4) of the Act and as such not to be entertained.

15. The claim of petitioner is that he was appointed on daily wage basis as skilled helper w.e.f. year 2001 for 89 days on muster roll and after completion of 89 days his services were unlawfully terminated by respondent no.2 as he was given fictional breaks. Thereafter, he was re-engaged in the same capacity for 89 days. This practice of engagement and disengagement continued upto 26.12.2014. Respondents have denied engagement of petitioner from 2001 to 2014, however, they have asserted in the reply that petitioner worked in different spells from 2001 to year 2010 and left the job at his own will after 14.6.2010. They have denied giving fictional breaks to not let petitioner complete 240 days for the purpose of continuous service. Respondents' further case is that as per standing instructions Ex.RW1/B, the labourer was engaged on contractual basis to do manual work on seasonal basis for specific spell of 89 days whereafter his services were automatically terminated. Respondents have pleaded that the workman could work atleast two spells after break of 15 days in each spell whole of the year.

16. On analysis of evidence it is observed that month wise attendance of petitioner Ex.RW1/V, not disputed by either of the parties, mentions petitioner to have been engaged on muster roll/89 days at RHR&TS, Bajaura and he worked initially from August 21 to 20th September for 19 days. Then 19 days each between 21st September to 20th October, 21st October to 20th November, 21st November to 20th December and then for 8 days between 21st December to 31st December, totaling 84 days in 2001. Thereafter, he has worked in spells for 144 days in 2002, 175

days in 2003, 167 days in 2004, 82 days in 2005, 100 days in 2006, 29 days in 2007, 92 days in 2008, 108 days in 2009 and 70 days in 2010 and never more than two spells between 2002 to 2010. In 2011, 2012 and 2013 nil working has been shown of engagement and it is mentioned that policy regarding outsourcing labourer on contractual basis were opted which was applicable w.e.f. 1.5.2013. RW1 has denied that petitioner has worked till 26.12.2014 but self stated the petitioner has worked on muster roll basis till 2001, thereafter, he worked on contractual basis. He was not sure, if petitioner has worked on contract basis from 1.1.2001 to year 2014. Thus, initial engagement of petitioner as per Ex.RW1/V is between 21st August to 20th September, 2001 when he worked for 19 days and petitioner worked in different spells interruptedly till 2010. But as per petitioner, he has worked till 26.12.2014 as deposed by him when he was finally terminated which testimony of petitioner could not be diluted by respondents despite cross-examination and as RW1 has not positively denied the same but stated to be not sure if petitioner worked on contract basis from 1.1.2002 to 26.12.2014. The pivotal question is as to whether fictional breaks in service were given to petitioner by the respondents. The plea of respondents that petitioner left the job at his own after 14.6.2010 cannot be accepted as petitioner has denied the same. RW1 has also admitted that no notice has been issued to petitioner for alleged abandonment of work. The plea of abandonment is required to be proved like any other plea but the same has not been done by the respondents. Respondents have also not established that respondent University/Research Station is a seasonal industry.

17. It is apposite to take not of standing instructions Ex.RW1/B before evaluating the defence of respondents. Letter dated 5.12.2001 Ex.RW1/B specifically mentions that as per policy decision taken by University, heretofore, no new casual workers shall be employed on M/rolls by any functionary of the University w.e.f. 1.1.2002 except casual workers whose names are appearing in the seniority list. Clause IV (D) (e) of standing instructions provides as under:—

> "The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement a break of at least 15 days is necessary in each case.

18. Further, vide letter dated 14.6.2002 Ex.RW1/C issued by Registrar regarding engagement of contractual labour, the duration for engagement of contractual labour in the University is provided as under:—

> "Two spells of 89 days each in whole of the calendar year with break of at least 15 days in each spell and in each case".

19. The aforementioned month-wise attendance Ex.RW1/V does prove that petitioner Om Chand was engaged and disengaged time to time between 2001 to 2010 not allowing him to work regularly and beyond 89 days in either of the spells. This proves that fictional breaks were given to petitioner. Plea of respondents that essential manual seasonal work was subject to availability of funds, cannot be believed as the same work was allegedly allotted to the contractor. The disengagement of petitioner from time to time between 2001 to 26.12.2014 and not letting him complete 240 days in a calendar year for the purpose of continuous service is discriminatory and unfair labour practice on part of the respondents in terms of Section 2(ra) specified in Clause 10 of the Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

> "2(10) To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen".

20. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent university being the instrumentality of State under Article 12 of Constitution has to

behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a daily wager. He cannot be deprived benevolent provisions of the Act as disengaging him from time to time is nothing but refusal by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. The plea of abandonment, seasonal work and engagement of petitioner on contractual basis is camouflage.

21. Our Hon'ble High Court in recent judgement ***Keshav Ram vs. State of H.P. & Others 2020 Law Suit (HP) 215*** has held the following:

"Beli Ram vs. State of H.P. and others decided on 02.06.2009, in which this Court has held as under:-—

"The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15.06.2009, this Court has held as under:—

"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year.

The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

22. It is also significant to note observations of Hon'ble High Court of Himachal Pradesh in ***Manoj Kumar Sharma vs. HRTC & Anr. 2007 LLR 1155*** wherein it is held as under:—

"…….(17) Hon'ble Supreme Court has held in Haryana State Electronic Department Corporation Limited v. Mamni, (2006) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and half years, in such circumstances, the Hon'ble Supreme Court has held the termination not bona fide but adopted to defeat the object of the Act. Thus, it is not covered by section 2 (oo) (bb) of the Industrial Disputes Act, 1947.

(18) In the present case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. This practice has been adopted by the management of respondent corporation to defeat the provisions of Section 25(F) of the Industrial Disputes Act, 1947. The letter dated 29-3-2001 issued by the Managing Director to all the Divisional Manager of the corporation-respondent amounts to unfair labour practice……"

23. Now coming to issue no.5 whether petitioner was engaged as labourer on contractual basis to do manual work on seasonal basis as alleged, it is observed that the answer certainly is in the negative for the reason that there is no contract alleged or brought on record by the respondents proving appointment of petitioner on contractual basis. The defence of respondents that in terms of standing instructions Ex.RW1/B respondents engaged petitioner on contractual basis for 89 days is altogether a camouflage not to let petitioner complete 240 days and deprive the benefit of continuous service.

24. This Court finds merit in the submissions of learned counsel for petitioner that the standing instructions Ex.RW1/B are of no legal consequence as in Award Ex.PW1/B passed by this Court, the defence based on said standing instructions has already met with failure. Hon'ble High Court of Himachal Pradesh vide its decision dated 13.11.2018 passed in CWP Nos. 2612, 2615, 2633 of 2018 has already dealt with this controversy and observed as under:—

"……10. It is a matter of record that the respondent workman served the petitioners as an unskilled labourer from the year 2006 to 09.09.2014 when his services were terminated without any notice or retrenchment compensation. Record also demonstrates that initially the engagement of the workman was purportedly made for 89 days and fictional breaks were given to ensure that the respondent-workman did not complete 240 days in a calendar year. It is also evident from the record that respondent was initially engaged on 17.07.2006 and he continued to work with the petitioners till 20.07.2012, whereafter he was engaged from 15.07.2013 to 30.09.2014 for different number of working days through outsourcing agency of manpower, as per the Outsource Policy introduced w.e.f. April 2013. However, there is no documentary evidence suggesting that at any stage the services of the respondent-workman were placed at the disposal of M/S Shimla Cleanways by the petitioners.

11. It is apparent from the record that there is violation of Section 25-G of the Industrial Disputes Act, 1947 as workmen, namely, Asha Devi and Tara Chand, who were engaged on

13.07.2009 were permitted to complete more than 240 days in the years 2010, 2011, 2012 and also 2013, whereas on account of intermittent breaks given to the respondent-workman, he was not permitted to complete 240 days in a calendar year. Therefore, the termination of services of the respondent-workman in the year 2014 without complying with the provisions of Section 25-F amounts to violation of the provisions of the Industrial Disputes Act, 1947. It has also been rightly held by learned Labour Court that but for the fictional breaks granted to the respondent-workman, he would have completed "continuous service" in a year as envisaged under Section 25-B of the Industrial Disputes Act, 1947. This also proves that the petitioners gave deliberate breaks to the respondent-workman so that he could not complete 240 days in a calendar year. The factum of disengaging the respondent-workman periodically and retaining juniors also stands borne out from the record. In this view of the matter, we do not find any infirmity with the findings returned by the learned Labour Court directing reengagement of the services of the respondent-workman forthwith alongwith seniority and continuity in service……"

25. The judgment dated 13.11.2018 of Hon'ble High Court of Himachal Pradesh supra has attained finality as the Special Leave Petition (CIVIL) Diary No(s).37890/2019 titled The Dean College of Horticulture and Forestry Neri & Anr. vs. Joginder Singh arising out of final judgment dated 13.11.2018 aforementioned stands dismissed by Hon'ble Supreme Court.

26. Peculiar aspect of the matter is how respondents are authorized to change service condition of petitioner from working under them as daily paid labourer to work under the alleged contractor without issuance of any notice in terms of Section 9A of the Act, has not been explained by the respondents. Petitioner has never consented to work on contractual basis.

27. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670*** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

"[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent- Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item l in the Fourth Schedule provides: 'wages, Including the period and mode of payment'.

By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the l.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

28. Hon'ble Apex Court in ***Workmen of Food Corporation of India vs. Food Corporation of India*** supra has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

29. Thus, the arbitrary change in service condition of petitioner from directly working under the respondents on muster rolls as labourer on daily basis to contractual working is illegal in terms of Section 9A of the Act and cannot be countenanced. Consequently, it is held that there has been time to time termination of services of the petitioner by the respondents from initial engagement in August, 2001 to 26.12.2014 which are fictional/artificial. The same are illegal and unjustified. Issue no.1 is accordingly decided in affirmative and issue no.5 in the negative.

ISSUE No. 2

30. As the fictional breaks given to the petitioner from August, 2001 to 26.12.2014 by respondents are declared unjustified and illegal, petitioner is held entitled to be deemed in continuous service from his initial date of engagement in August, 2001. Petitioner is also entitled to consequential benefits of seniority from his initial date of engagement in August, 2001 except back wages as petitioner has not deposed/averred as to how he has been able to maintain himself in absence of being gainfully employed/working. Petitioner in his affidavit Ex.PW1/A mentioned him 48 years of age and it cannot be presumed that person of such age would remain without work for long since July, 2010. Issue no.2 is decided in above terms.

ISSUE No. 3

31. In view of positive findings on issues no.1 and 2, the claim petition is held maintainable. Even otherwise, respondents have not proved or established the petition to be not maintainable. Accordingly, issued no.3 is answered in negative against the respondent.

ISSUE No. 4

32. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, ***(1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:
"*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

33. There is no unreasonable delay by petitioner in raising the industrial dispute. Further, the reference by appropriate Government made in May, 2106 does not raise this issue as also makes reference to letter dated 12.5.2014 of Labour -cum-Conciliation Officer, Kullu. Thus, the claim petition is not time barred. Accordingly, issue no.4 is answered in negative against respondents.

ISSUE No. 6

34. Respondents have averred in the preliminary objections that the Director of Research of University, is the principal employer under the policy of outsourcing who has not been arrayed as a necessary party. Policy of outsourcing is stated to be introduced by the university w.e.f. 1st May, 2013 vide notification dated 30.4.2013. However, the petitioner was engaged in August, 2001, therefore said policy of outsourcing is not material in this case. Furthermore, the Associate Director respondent no.2 is the relevant and necessary party in terms of reference, who stands arrayed in the claim petition as well. Consequently, this issue is answered in negative against the respondents.

RELIEF

35. As a sequel to the findings of this Court on the aforementioned issues, the claim petition is allowed in part. It is held that time to time artificial breaks in service given to petitioner by respondents from August, 2001 to 26.12.2014 are illegal and unjustified, who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in August, 2001. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged labourer, **except back wages**. His seniority shall be reckoned from the date of initial engagement in August, 2001. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2022.

Sd/-
(ARVIND MALHOTRA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA–171001

NOTIFICATION

Shimla, the 29th April, 2022

No. HHC/GAZ/14-417/2021.—Hon'ble the Chief Justice has been pleased to grant 20 days earned leave *w.e.f.* 09-05-2022 to 28-05-2022 with permission to prefix & suffix Sundays falling on 08-05-2022 & 29-05-2022 in favour of Sh. Varun, Civil Judge-*cum*-JM (II), Solan, H.P.

Certified that Sh. Varun is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Sh. Varun would have continued to hold the post of Civil Judge-*cum*-JM (II), Solan, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA–171001

NOTIFICATION

Shimla, the 30th April, 2022

No. HHC/GAZ/14-371/2016.—Hon'ble the Chief Justice has been pleased to grant 05 days earned leave *w.e.f.* 09-05-2022 to 13-05-2022 with permission to prefix Sunday falling on 08-05-2022 and suffix Second Saturday, Sunday & Gazetted holiday falling *w.e.f.* 14-05-2022 to 16-05-2022 in favour of Sh. Tarun Walia, Civil Judge-*cum*-JMFC (III), Una, H.P.

Certified that Sh. Tarun Walia is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Sh. Tarun Walia would have continued to hold the post of Civil Judge-cum-JMFC (III), Una, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA–171001

NOTIFICATION

Shimla, the 29th April, 2022

No. HHC/Admn.6 (23)/74-XVI.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Civil Judge-*cum*-JMFC (I), Solan as Drawing and Disbursing Officer in respect of the Court of Civil Judge-*cum*-JM (II), Solan and also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Court during the earned leave period of Sh. Varun, Civil Judge-*cum*-JM (II), Solan, HP *w.e.f.* 09-05-2022 to 28-05-2022 with permission to prefix & suffix Sundays falling on 08-05-2022 & 29-05-2022 or till he returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA–171001

NOTIFICATION

Shimla, the 26th April, 2022

No. HHC/Admn.6 (23)/74-XVI.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Sr. Civil Judge-cum-ACJM, Nalagarh as Drawing and Disbursing Officer in respect of the

Court of Civil Judge-*cum*-JMFC, Nalagarh and also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Court during the maternity leave period of Ms. Nikita Tahim, Civil Judge-*cum*-JMFC, Nalagarh, HP *w.e.f.* 27-04-2022 to 23-10-2022 with permission to suffix Deepawali holidays falling *w.e.f.* 24-10-2022 to 26-10-2022 or till she returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA–171001

NOTIFICATION

Shimla, the 30th April, 2022

No. HHC/Admn.6 (23)/74-XVI.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Sr. Civil Judge-*cum*-ACJM, Una as Drawing and Disbursing Officer in respect of the Court of Civil Judge-*cum*-JMFC (III), Una and also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Court during the earned leave period of Sh. Tarun Walia, Civil Judge-*cum*-JMFC (III), Una, HP *w.e.f.* 09-05-2022 to 13-05-2022 with permission to prefix Sunday falling on 08-05-2022 and suffix Second Saturday, Sunday & Gazetted holiday falling *w.e.f.* 14-05-2022 to 16-05-2022 or till he returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA–171001

NOTIFICATION

Shimla, the 27th April, 2022

No. HHC/Admn.6 (23)/74-XVI.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Civil Judge-*cum*-JM, Kullu as Drawing and Disbursing Officer in respect of the Court of Sr. Civil Judge-*cum*-CJM, Lahaul & Spiti at Kullu and also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Court during the earned leave period of Sh. Harmesh Kumar, Sr. Civil Judge-*cum*-CJM, Lahaul & Spiti at Kullu, H.P. *w.e.f.* 04-05-2022 to 23-05-2022 with permission to prefix Gazetted holiday falling on 03-05-2022 or till he returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA–171001

NOTIFICATION

Shimla, the 26th April, 2022

No. HHC/GAZ/14-301/08-I.—Hon'ble the Chief Justice has been pleased to grant *ex-post facto* sanction of 07 days commuted leave *w.e.f.* 22-02-2022 to 28-01-2022 in favour of Sh. Nitin Mittal, Sr. Civil Judge-*cum*-ACJM (I), Hamirpur, H.P.

Certified that Sh. Nitin Mittal had joined the same post and at the same station from where he had proceeded on leave, after expiry of the above period of leave.

Also certified that Sh. Nitin Mittal would have continued to hold the post of Sr. Civil Judge-*cum*-ACJM (I), Hamirpur, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA–171001

NOTIFICATION

Shimla, the 27th April, 2022

No. HHC/GAZ/14-283/2005-I.—Hon'ble the Chief Justice has been pleased to grant 20 days earned leave *w.e.f.* 04-05-2022 to 23-05-2022 with permission to prefix Gazetted holiday falling on 03-05-2022 in favour of Sh. Harmesh Kumar, Sr. Civil Judge-cum-CJM, Lahaul & Spiti at Kullu, HP.

Certified that Sh. Harmesh Kumar is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Sh. Harmesh Kumar would have continued to hold the post of Sr. Civil Judge-*cum*-CJM, Lahaul & Spiti at Kullu H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA–171001

NOTIFICATION

Shimla, the 26th April, 2022

No. HHC/GAZ/14-381/2017.—Hon'ble the Chief Justice has been pleased to grant 180 days maternity leave *w.e.f.* 27-04-2022 to 23-10-2022 with permission to suffix Deepawali holidays

falling *w.e.f.* 24-10-2022 to 26-10-2022 in favour of Ms. Nikita Tahim, Civil Judge-*cum*-JMFC, Nalagarh, HP.

Certified that Ms. Nikita Tahim is likely to join the same post and at the same station from where she proceeds on leave, after expiry of the above period of leave.

Also certified that Ms. Nikita Tahim would have continued to hold the post of Civil Judge-*cum*-JMFC, Nalagarh H.P., but for her proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

विधि विभाग

अधिसूचना

शिमला–2, 7 मई, 2022

संख्याः एल0एल0आर0–डी0(6)–3 / 2022–लेज.–हिमाचल प्रदेश के राज्यपाल ने भारत के संविधान के अनुच्छेद 200 के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए हिमाचल प्रदेश नगर निगम (संशोधन) विधेयक, 2022 (2022 का विधेयक संख्यांक 2) को दिनांक 05–05–2022 को अनुमोदित कर दिया है तथा अनुच्छेद 348 के खण्ड (3) के अधीन विधेयक के अंग्रेजी पाठ को राजपत्र, हिमाचल प्रदेश में प्रकाशित करने के लिए प्राधिकृत कर दिया है। अतः उपरोक्त विधेयक को वर्ष 2022 के अधिनियम संख्यांक 10 के रूप में अंग्रेजी प्राधिकृत पाठ सहित राजपत्र (ई–गजट) हिमाचल प्रदेश में प्रकाशित किया जाता है।

आदेश द्वारा,
राजीव भारद्वाज,
प्रधान सचिव (विधि)।

हिमाचल प्रदेश नगर निगम (संशोधन) अधिनियम, 2022

धाराओं का क्रम

धारा :

1. संक्षिप्त नाम और प्रारम्भ।

2. धारा 6 का संशोधन।

3. 2022 के हिमाचल प्रदेश अध्यादेश संख्यांक 1 का निरसन और व्यावृत्तियां।

2022 का अधिनियम संख्यांक 10

हिमाचल प्रदेश नगर निगम (संशोधन) अधिनियम, 2022

(माननीय राज्यपाल महोदय द्वारा तारीख 5 मई, 2022 को यथाअनुमोदित)

हिमाचल प्रदेश नगर निगम अधिनियम, 1994 (1994 का अधिनियम संख्यांक 12) का और संशोधन करने के लिए **अधिनियम**।

भारत गणराज्य के तिहत्तरवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :–

1. **संक्षिप्त नाम और प्रारम्भ.**––(1) इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश नगर निगम (संशोधन) अधिनियम, 2022 है।

(2) यह 03 फरवरी, 2022 को प्रवृत्त हुआ समझा जाएगा।

2. **धारा 6 का संशोधन.**––हिमाचल प्रदेश नगर निगम अधिनियम, 1994 की धारा 6 के खण्ड (क) के परन्तुक में, ''सैंतीस'' शब्द के स्थान पर ''इकतालीस'' शब्द रखा जाएगा।

3. **2022 के हिमाचल प्रदेश अध्यादेश संख्यांक 1 का निरसन और व्यावृत्तियां.**––(1) हिमाचल प्रदेश नगर निगम (संशोधन) अध्यादेश, 2022 का एतद्द्वारा निरसन किया जाता है।

(2) ऐसे निरसन के होते हुए भी इस प्रकार निरसित अध्यादेश के अधीन की गई कोई बात या कार्रवाई इस अधिनियम के तत्स्थानी उपबन्धों के अधीन की गई समझी जाएगी।

———————

AUTHORITATIVE ENGLISH TEXT

THE HIMACHAL PRADESH MUNICIPAL CORPORATION (AMENDMENT) ACT, 2022

ARRANGEMENT OF SECTIONS

Sections :

1. Short title and commencement.

2. Amendment of section 6.

3. Repeal of the H.P. Ordinance No. 1 of 2022 and savings.

———————

Act No. 10 of 2022

THE HIMACHAL PRADESH MUNICIPAL CORPORATION (AMENDMENT) ACT, 2022

(AS ASSENTED TO BY THE GOVERNOR ON 5TH MAY, 2022)

AN

ACT

further to amend the Himachal Pradesh Municipal Corporation Act, 1994 (Act No. 12 of 1994).

BE it enacted by the Legislative Assembly of Himachal Pradesh in Seventy-third Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the Himachal Pradesh Municipal Corporation (Amendment) Act, 2022.

(2) It shall be deemed to have come into force on the 3rd day of February, 2022.

2. Amendment of section 6.—In section 6 of Himachal Pradesh Municipal Corporation Act, 1994, in clause (a), in the proviso, for the words "thirty seven", the words "forty one" shall be substituted.

3. Repeal of the H.P. Ordinance No. 1 of 2022 and savings.—(1) The Himachal Pradesh Municipal Corporation (Amendment) Ordinance, 2022 is hereby repealed.

(2) Notwithstanding such repeal any action taken or anything done under the Ordinance so repealed, shall be deemed to have been done or taken under the corresponding provisions of this Act.

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0)

उनवान मुकद्दमा : 40 / 41 मृत्यु तिथि : 26–12–2014

1. श्री रवि कुमार सुपुत्र श्री गोपी राम, निवासी बडुआ, डा0 धानग, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0) .. प्रार्थीगण।

बनाम

1. आम जनता ग्राम पंचायत
2. श्री जोगिन्द्र सिंह पाल सुपुत्र गोपी राम, निवासी बडुआ, तहसील बैजनाथ। .. प्रतिवादीगण।

विषय.–U/S 40–41 के तहत वसीयत को पंजीकरण करने बारे ।

उपरोक्त केस इस अदालत में विचाराधीन है। प्रार्थी रवि कुमार सुपुत्र गोपी राम, निवासी बडुआ, डा0 धानग ने इस अदालत में प्रार्थना–पत्र गुजारा है कि रूपन देवी पत्नी श्री गोपी राम, निवासी बडुआ, डा0 धानग ने रवि कुमार के हक में एक जुबानी वसीयत लिखी थी अतः इस वसीयत को रजिस्टर करने हेतू आग्रह किया है लिहाजा आम जनता व ऊपर दर्शाए प्रतिवादीगण को सूचित किया जाता है कि इस केस के बारे में कोई भी एतराज या उजर पेश करना चाहते हैं तो दिनांक 10–05–2022 को अधोहस्ताक्षरी की अदालत में असालतन या वकालतन हाजिर होकर पेश कर सकते हैं। गैरहाजिर आने की सूरत में आम जनता व अन्य के विरुद्ध एकतरफा कार्यवाही अमल में लाई जाएगी तथा वसीयत को रजिस्टर करने के आदेश दिए जाएंगे।

आज दिनांक 30–03–2022 को मेरे मोहर एवं हस्ताक्षर से जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता श्री जय चन्द, द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी धर्मशाला, तहसील धर्मशाला, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा नं0 : 23/NT / 22

श्री बलदेव कुमार पुत्र गोरखु राम, निवासी महाल रसां, मौजा सिद्धबाड़ी, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 37(2) हिमाचल प्रदेश नाम दुरुस्ती करने बारे।

नोटिस बनाम आम जनता।

श्री बलदेव कुमार पुत्र गोरखु राम, निवासी महाल रसां, मौजा सिद्धबाड़ी, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0) ने इस अदालत में शपथ–पत्र सहित मुकद्दमा दायर किया है कि मेरे पिता का नाम राजस्व रिकार्ड महाल रसां, मौजा सिद्धबाडी, में भोटू उपनाम होलू पुत्र घुम्मण दर्ज है जोकि गलत है। जबकि मेरे पिता का नाम भोटू उपनाम होलू की बजाए गोरखु राम पुत्र घुम्मण है इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को गोरखु राम पुत्र घुम्मण की नाम दुरुस्ती बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 15–05–2022 को असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र गोरखु राम पुत्र घुम्मण के नाम की दुरुस्ती पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 06–04–2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

ब अदालत सहायक समाहर्ता श्री जय चन्द, द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी धर्मशाला, तहसील धर्मशाला, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा नं0 : /NT / 22

श्री राजेश कुमार पुत्र मंशा राम, निवासी चेतडू, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 37(2) हिमाचल प्रदेश नाम दुरुस्ती करने बारे।

नोटिस बनाम आम जनता।

श्री राजेश कुमार पुत्र मंशा राम, निवासी चेतडू, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0) ने इस अदालत में शपथ–पत्र सहित मुकद्दमा दायर किया है कि मेरे पिता का नाम राजस्व रिकार्ड महाल व मौजा चेतडू में मोठू पुत्र बीरबल दर्ज है जोकि गलत है। जबकि मेरे पिता का नाम मोठू पुत्र बीरबल की बजाए मंशा राम पुत्र बीरबल है इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को मंशा राम पुत्र बीरबल की नाम दुरुस्ती बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 15–05–2022 को असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र मंशा राम पुत्र बीरबल के नाम की दुरुस्ती पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 06–04–2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : / 2022

Niyma Choezom d/o Kunga, r/o Forsythganj, P.O. Dharamshala, Tehsil Dharamshala, District Kangra (H.P.).

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Niyma Choezom d/o Kunga, r/o Forsythganj, P.O. Dharamshala, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में शपथ–पत्र सहित मुकद्दमा दायर किया है कि उसका Niyma Choezom का जन्म दिनांक 31–01–2022 को हुआ है परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Niyma Choezom के जन्म पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 17–05–2022 को असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 11–04–2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : / 2022

Tenzin Norden s/o Wangchuk Lhundup & Mr. Penpa Dolma, r/o Upper TCV School, Dal Lake, Dharamshala Cantt., Tehsil Dharamshala, District Kangra (H.P.).

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Tenzin Norden s/o Wangchuk Lhundup & Mr. Penpa Dolma, r/o Upper TCV School, Dal Lake, Dharamshala Cantt., Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में शपथ–पत्र सहित मुकद्दमा दायर किया है कि उसका Tenzin Norden का जन्म दिनांक 01–11–1986 को हुआ है परन्तु एम0 सी0 धर्मशाला / ग्राम पंचायत में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Tenzin Norden के जन्म पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 17–05–2022 को असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 11–04–2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

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ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 : / 2022

Tenzin Choephel s/o Lobsang Tenzin, r/o 231, Patola Marg, Dharamshala, Tehsil Dharamshala, District Kangra (H.P.).

बनाम

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

Tenzin Choephel s/o Lobsang Tenzin, r/o 231, Patola Marg, Dharamshala, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में शपथ–पत्र सहित मुकद्दमा दायर किया है कि उसका Tenzin Choephel का जन्म दिनांक 19–06–1980 को हुआ है परन्तु एम0 सी0 धर्मशाला / ग्राम

पंचायत में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Tenzin Choephel के जन्म पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 17–05–2022 को असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 11–04–2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।